

(31,722)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 999

PAN AMERICAN PETROLEUM & TRANSPORT
COMPANY AND PAN AMERICAN PETROLEUM
COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF ATTORNEYS.

For Appellants:

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For Appellees:

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ERTS, Esqs., Special Counsel, and SAM-
UEL W. McNABB, Esqs., United States
Attorney, and J. EDWIN SIMPSON,
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Federal Building, Los Angeles, California.

CITATION.

United States of America,—ss.

To the United States of America, Plaintiff, and to
Atlee Pomerene, Owen J. Roberts, and S. W.
McNabb, Esquires, Solicitors for said Plaintiff,
GREETING:

You are hereby cited and admonished to be and

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appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 13th day of August, A. D. 1925, pursuant to the order allowing an appeal entered July 15, 1925, and of record in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain suit in equity, B-100-M, therein, wherein the United States of America is plaintiff and Pan American Petroleum Company, a corporation, and Pan American Petroleum & Transport Company, a corporation, are defendants, and you are ordered to show cause, if any there be, why the final decree made and entered on the 11th day of July, A. D. 1925, in the said equity suit mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable PAUL J. McCORMICK, United States District Judge for the Southern District of California, this 15th day of July, A. D. 1925, and of the Independence of the United States, the one hundred and fiftieth.

[Seal] PAUL J. McCORMICK,
U. S. District Judge for the Southern District of California.

Service of the foregoing citation at the City of Los Angeles in the State of California is hereby acknowledged by the plaintiff-appellee, the United

States of America, by its solicitors, this 15th day of July, A. D. 1925.

ATLEE POMERENE,
OWEN J. ROBERTS,
S. W. McNABB,

Solicitors for the United States of America, Plaintiff-Appellee.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit, Pan American Petroleum Company, a Corporation, and Pan American Petroleum & Transport Company, a Corporation, Appellants, vs. United States of America, Appellee. Citation. Filed Jul. 15, 1925. Chas. N. Williams, Clerk. Louis J. Somers, Deputy.

CITATION.

United States of America,—ss.

To Pan American Petroleum and Transport Company and Pan American Petroleum Company,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the thirteenth day of August, A. D. 1925, pursuant to a cross-appeal filed July 15, 1925, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action in equity in said Court wherein the United States of America is plaintiff and Pan

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American Petroleum and Transport Company and Pan American Petroleum Company are defendants, and you are ordered to show cause, if any there be, why the final decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable PAUL J. McCORMICK, United States District Judge for the Southern District of California, this 15th day of July, A. D. 1925, and of the Independence of the United States, the one hundred and fiftieth.

[Seal] PAUL J. McCORMICK,
U. S. District Judge for the Southern District of
California.

Service of the above citation is accepted on behalf of Pan American Petroleum and Transport Company and Pan American Petroleum Company, defendants and cross-appellees.

FREDERICK R. KELLOGG,
FRANK J. HOGAN,

Attorneys for Defendants-Cross-Appellees.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Cross-Appellant, vs. Pan American Petroleum & Transport Company and Pan American Petroleum Company, Cross-Appellees. Citation. Filed Jul. 15, 1925. Chas. N. Williams, Clerk, Louis J. Somers, Deputy.

In the District Court of the United States for the
Southern District of California, Northern Di-
vision.

EQUITY—No. B-100-M.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM & TRANSPORT COMPANY,
a Corporation,

Defendants.

BE IT REMEMBERED, that in that certain
cause in equity in the above-named court entitled
as above shown the following proceedings were had
and documents filed, and the same are included
herein as a transcript of record on appeal to the
United States Circuit Court of Appeals for the
Ninth Circuit, in accordance with praecipe filed
with the Clerk of the said Court by defendants-ap-
pellants indicating the portions of the record to be
incorporated into the transcript on their appeals,
and praecipe filed with the Clerk of the said Court
by plaintiff-appellee indicating the portions of the
record to be incorporated into the transcript on
plaintiff's cross-appeal:

Mar. 17, 1924.	Memo.	Original bill of complaint filed.
Mar. 17, 1924.	Memo.	Defendants accepted service and entered their appearance in the case.
Mar. 17, 1924.	Memo.	Stipulation of plaintiff and defendants transferring the cause for hearing from Los Angeles, Calif., in the Southern Division of this Court, with same force and effect as if heard in the Northern Division, filed.
Mar. 17, 1924.	Memo.	H, A. Rousseau and J. Crampton Anderson appointed receivers to take possession, hold and operate, <i>pendente lite</i> , the properties located in the State of California, in controversy in this suit, and enjoining defendants <i>pendente lite</i> from further operating the same.

Mar. 24, 1924. Memo. Receivers duly qualified by filing bonds as required by the Court and entered upon their duty.

Apr. 15, 1924. Memo. Order extending time for defendants to plead.

Apr. 22, 1924. Memo. Order granting plaintiff leave to file amended bill of complaint.

Amended bill of complaint.

Filed April 22, 1924. Chas. N. Williams, Clerk.

[1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

(Name of Court and Title of Case.)

AMENDED BILL OF COMPLAINT.

To the Honorable the Judges of the said Court:

The United States of America, appearing herein by its attorneys, Atlee Pomerene and Owen J. Roberts, special counsel duly appointed and empowered thereunto by the President of the United States, by and with the advice and consent of the Senate of the United States, under a joint resolution of the Congress, brings this its bill of complaint against Pan American Petroleum Company, a corporation, and Pan American Petroleum and Transport Company, a corporation, and thereupon complains and says:

1. Defendant Pan American Petroleum Company is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under and by [2] virtue of the laws of the state of California and is a citizen and resident of said state and of the southern district thereof. Defendant Pan American Petroleum and Transport Company is now, and was at all times hereinafter mentioned, a corporation duly organized and existing under and by virtue of the laws of the state of Delaware, and is now doing business in the state of California and in the southern district thereof. The defendant last named owns all of the capital stock of the defendant first named.

2. At the times hereinafter mentioned, Edward L. Doheny was, and now is, the duly elected chief

executive officer of each of defendants, and was at the times hereinafter mentioned, and still is, the owner and holder of a large number of shares of the capital stock of Pan American Petroleum and Transport Company.

3. Albert B. Fall, from to wit, March 5, 1921, until to wit, March 4, 1923, was the duly appointed, qualified, and acting Secretary of the Interior of the United States of America.

4. Edwin Denby, at all of the times hereinafter mentioned, was the duly appointed, qualified, and acting Secretary of the Navy of the United States of America.

5. At the times hereinafter mentioned, the United States of America was and now is the owner in fee simple of the following described land situate in the county of Kern, State of California: Mount Diablo base and meridian, T 30 S., R. 22 E., all of sec. 24; T. 30 S., R. 23 E., all of sec. 10, all of sec. 12, all of secs. 14 and 15, north 62½ acres of NW. ¼ of sec. 16, [3] NE. ¼, S. ½ sec. 17, all of sec. 18, NE. ¼, S. ½ sec. 19, all of secs. 20 to 30, inclusive, all of secs. 32 to 35; inclusive; T. 31 S., R. 23 E., all of secs. 1 to 4, inclusive, all of secs. 10 to 12, inclusive, N. ½ of sec. 13, all of sec. 14; T. 30 S., R. 24 E., all of sec. 18, all of sec. 20, all of sec. 28, all of sec. 30, all of sec. 32, W. ½, W. ½ E. ½, west 147 feet of E. ½ E. ½ of sec. 34; T. 31 S., R. 24 E., S. ½ of sec. 2, S. ½, NW. ¼ of sec. 3, all of secs. 4 to 6 inclusive, N. ½, SE. ¼ of sec. 7, all of secs. 8 to 12, inclusive, all of sec. 18. At the times hereinafter mentioned the United States of America was

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and now is the owner in fee simple of the following described land situate in the county of Kern, State of California: Mount Diablo base and meridian, T. 31 S., R. 24 E., sec. 3, NE. $\frac{1}{4}$. All of said lands were a part of the unappropriated public domain of said United States, and contained petroleum in large quantities.

6. On certain dates hereinafter set forth, defendants became possessed of certain writings purporting to create certain rights and certain interests in said lands in favor of the defendants, adversely to the title, ownership, and possession of said United States, which writings were executed or caused to be executed by said Edward L. Doheny, the said Abert B. Fall, and said Edwin Denby without authority of law, and as a result of a conspiracy entered into by said Albert B. Fall and said Edward L. Doheny at a time prior to the execution of said writings.

7. Said lands hereinabove described, at and long prior to the happening of the things herein complained [4] of, by proclamation and order of the President of the United States and action of the Congress thereof, were set apart and dedicated as naval oil reserves, and by said proclamation, order, and action all entry rights theretofore existing and not previously exercised were terminated and repealed.

8. By Act of Congress of the United States approved June 4, 1920, it was provided:

That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may be

come subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled "An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said act of February 25, 1920, are not affected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed \$500,000, [5] are hereby made available for this purpose until July 1, 1922; Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.

Said act is unrepealed and unmodified by any

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subsequent legislation, and has at all times since its enactment been in full force and effect.

9. Prior to May 31, 1921, said Albert B. Fall made and caused to be made certain representations to the President of the United States, and obtained and caused to be obtained from the President of the United States, acting pursuant to such representations in good faith, a certain Executive Order bearing date May 31, 1921, a true copy whereof is hereto annexed and made a part hereof, marked Exhibit "A." Said order was without legal authority and of no force or virtue, and was known so to be by said Fall and by said Doheny and by the defendants.

10. The representations made by said Fall, then acting as Secretary of the Interior, to the President of the United States, were to the effect that said order was proper, necessary, and for the best interests of the Government of the United States and the public, all of which representations were false, fraudulent, and untrue, and were at the time known to said Albert B. Fall to be false and untrue, and were made by the said Albert B. Fall not in good [6] faith and for the benefit of the public interest, but for the unlawful purpose of enabling him, as Secretary of the Interior, to effect a fraudulent transfer of rights in said lands to defendant.

11. Subsequent to the making of the said order, said Fall and said Doheny did combine, confederate, and conspire to defraud the United States by bringing about the execution and delivery of the writings hereinafter recited. And further, said

Fall and said Doheny did also conspire to bring about the execution of the said writings for the private gain of said Fall and of defendants, for whom said Doheny acted in that behalf.

12. Pursuant to said conspiracy it was agreed and arranged between said Fall and said Doheny that in the event certain rights were created in defendants, which by the terms of said writings hereinafter mentioned were to all intents and purposes created in said defendants, said Fall was to receive certain rewards from said Doheny, and he did in fact receive certain rewards from said Doheny in consideration of his unlawful conduct in the furtherance of said conspiracy.

13. On or about November 30, 1921, in furtherance of the conspiracy between said Fall and said Doheny, said Doheny did pay unto the said Fall that certain reward theretofore promised him, to wit, the sum of \$100,000 lawful money of the United States of America.

14. On, to wit, March 7, 1922, said Albert B. Fall, purporting to act on behalf of the United States, in [7] writing, invited proposals for the acceptance of royalty crude oil accruing to the United from leases in naval petroleum reserves No. 1 or No. 2 in the State of California, or both, in exchange for fuel oil and storage facilities to be furnished and provided by the bidder at Pearl Harbor, Hawaii. Said invitation provided that bids should be made in barrels of crude oil, for the furnishing, erecting, and completing of certain structures and storage facilities and the filling of said structures

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with fuel oil. Said invitation for proposals provided, *inter alia*.

"In event that any proposer finds it unacceptable to make a lump-sum bid covering every item in the work of providing storage facilities, he may offer such alternative as he may care to suggest: Provided, That such alternative proposal be supported by acceptable bids for lump-sum subcontracts covering at least two-thirds of the work.

In event that any bidder desires, he may similarly offer an alternative bid for providing the fuel oil in storage, not stated in fixed terms of a ratio of exchange per barrel, but such alternative offer must be clearly stated, must be complete, and must provide for payment by exchange for crude royalty oil in the field."

Said invitation for proposals was so drawn pursuant to said conspiracy and understanding that no one but defendant Pan American Petroleum and Transport Company could or would bid thereon. The [8] provision of said invitation providing for alternative bids was intended to permit said defendant to make a bid not in competition with any other who might venture to bid, but as the basis of a special, secret, and noncompetitive contract with the United States.

15. On, to wit, April 14, 1922, Pan American Petroleum and Transport Company did submit a certain bid in accordance with the invitation for proposals and specifications thereto attached, and did further submit under the authority of said

invitation an alternative proposal, designated "Proposal B," wherein and whereby it named a lower lump-sum consideration than in its bid made in accordance with the terms of the invitation, and agreed that if certain savings should be affected in the construction of the required storage facilities at Pearl Harbor it would proportionately reduce the contract consideration in barrels of oil to be delivered by the United States. Said "Proposal B" further specified that in consideration of this concession the bidder, Pan American Petroleum and Transport Company, should have a certain prior right to become the lessee in leases for oil and gas thereafter to be made in petroleum reserve No. 1.

16. Without competitive bidding, and without authority of law, and pursuant to the conspiracy above set forth, said Albert B. Fall did award a contract pursuant to said invitation and said "Proposal B," to defendant Pan American Petroleum and Transport Company, and pursuant to said award said Albert B. Fall caused to be prepared a certain [9] agreement which was executed and delivered on behalf of the United States of America by Edward C. Finney, Acting Secretary of the Interior, acting in that behalf under the instructions of the said Albert B. Fall, and by Edwin Denby, Secretary of the Navy, and on behalf of Pan American Petroleum and Transport Company by its proper officers, on the 25th day of April, 1922. A true copy of said agreement is hereto annexed and made a part hereof, marked Exhibit "B."

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17. Said contract or agreement not only operated as an agreement of sale and delivery of all naval royalty oil due and to become due to the United States out of naval reserves No. 1 and No. 2 in the State of California, but also gave to defendant Pan American Petroleum and Transport Company a prior right or option to become the lessee of any oil or gas rights which might be leased on a certain easterly portion of naval petroleum reserve No. 1. Said agreement was purposefully and intentionally so drawn in pursuance of said conspiracy in order to insure to defendant, to the great detriment and in fraud of the rights of the United States, any and all oil which might be found within said naval reserve No. 1, to prevent any other person or corporation from becoming lessee of said valuable oil and gas, or any part thereof, and to prevent competitive bidding or any open competition for said naval leases.

18. In connection with and as a part or supplement of said agreement, Exhibit "B" hereof, the Assistant Secretary of the Interior of the United States, [10] as Acting Secretary, with the knowledge and by the direction of said Albert B. Fall, did thereafter deliver to defendant, Pan American Petroleum and Transport Company, a certain letter, a true copy whereof is hereto annexed, made a part hereof, and marked Exhibit "E." Said letter was written as a result of said conspiracy, was a fraud upon the rights of the United States, was intended to and, on its face, did confer upon said

defendant an especially valuable right to a lease to the lands last described in paragraph 5 hereof, which lands were then known to contain great and valuable deposits of petroleum and were in close proximity to other lands then actually producing great quantities of petroleum. Said letter was written with the intent that said land should be acquired by said defendant secretly, without competitive bidding, without authority of law and in violation of law, and wholly without right or authority in the officers of the United States who executed the same.

19. At the time of the execution of said agreement, Exhibit "B" hereof, said Fall and said Doheny, and the other officers and the directors of defendant, well knew and understood that the oil accruing to the United States as royalty from existing leases on naval reserves No. 1 and No. 2 would be wholly insufficient to pay defendant Pan American Petroleum and Transport Company for the oil and the structures covered by said agreement within any reasonable time, if ever. They further well knew and understood that there was a vast amount of valuable oil and gas contained [11] in naval reserve No. 1 which under the terms of said agreement could be leased to said defendant or its nominee without competitive bidding and at such price or prices, and upon such terms, as the said Fall and the said Doheny might agree. They agreed and conspired that thereafter, under the pretense that royalty oil was not accruing fast enough to press forward the construction work

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at Pearl Harbor, Hawaii, a further construction contract and a further lease should be made which should turn over to said defendant the whole remaining unleased portion of naval reserve No. 1, amounting to approximately 32,000 acres.

20. Pursuant to said plan and conspiracy, and pursuant to the terms of said letter, Exhibit "E" hereof, said Albert B. Fall did cause to be executed and delivered to defendant Pan American Petroleum and Transport Company, and said company did also execute and deliver, on June 5, 1922, a certain lease covering the lands last described in paragraph 5 hereof, a true copy whereof is hereto annexed marked Exhibit "F" and made a part hereof.

21. Pursuant to said plan and conspiracy, said Albert B. Fall did, on or about November 30, 1922, ostensibly enter into negotiation with said defendant Pan American Petroleum and Transport Company for the consummation of a contract supplement to the above-mentioned agreement of April 25, 1922, and for the consummation of a lease of all the remaining unleased oil and gas lands in naval reserve No. 1, [12] being the lands hereinabove in paragraph 5 first described.

22. Immediately thereafter, on, to wit, December 11, 1922, the said Fall, in pursuance of said conspiracy, did cause two certain agreements to be executed and delivered, the one thereof purporting to be an agreement supplemental to the agreement of April 25, 1922, and the other thereof purporting to be a lease upon the lands first described in para-

graph 5 hereof, being all of the then unleased lands in naval reserve No. 1, amounting to about 32,000 acres. A true copy of the said supplement agreement is hereto annexed, made a part hereof, and marked Exhibit "C," and a true copy of the said lease is hereto annexed, made a part hereof, and marked Exhibit "D."

23. Solely for the convenience of said defendant Pan American Petroleum and Transport Company, said lease Exhibit "D" was at its instance and request made to defendant Pan American Petroleum Company, a corporation the entire stock of which is and was owned by Pan American Petroleum and Transport Company, and which was and is wholly and absolutely owned, controlled, and managed by the latter company. Said lease is in effect and in contemplation of law therefore held, owned, controlled, and constitutes an asset of defendant Pan American Petroleum and Transport Company.

24. Said supplemental contracts of April 25, 1922, Exhibit "E" herein, and of December 11, 1922, Exhibit "C" herein, and said leases of June 5, 1922, Exhibit [13] "F" herein, and of December 11, 1922, Exhibit "D" herein, were all, pursuant to said conspiracy, entered into secretly and privately, and no advertisement was made of the intention to make any of the same, and no competitive bidding was had for any of them.

25. The lands covered by said leases of June 5, 1922, Exhibit "F" herein, and of December 11, 1922, Exhibit "D" herein, are underlaid by vast quantities of oil and gas of enormous value, and

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said leases so made insured to the lessee enormous profits which have been estimated by said Doheny at not less than \$100,000,000.

26. Said leases of June 5, 1922, Exhibit "F" herein, and of December 11, 1922, Exhibit "D" herein, constitute liens, encumbrances, and clouds upon the title of plaintiff to said lands, which plaintiff is entitled to have removed; were and are the result of an unlawful conspiracy; were and are a fraud upon the United States of America; are illegal, null, void, and of no force or validity, by reason of the matters and things herein set forth; and for the further reason that the same were executed without authority in the officers of the United States who purported to execute them, and were wholly unauthorized by law or any statute, and should be delivered up to the United States to be canceled.

27. Under color of said agreement of April 25, 1922, Exhibit "B" hereof, and supplemental agreement of December 11, 1922, Exhibit "C" hereof, defendant Pan American Petroleum and Transport Company has received all of the royalty oil due the United [14] States under all leases upon naval petroleum reserves No. 1 and No. 2 in the State of California, including the royalty oil accruing under the leases of June 5, 1922, Exhibit "F," and of December 11, 1922, Exhibit "D," under color and pretense of an exchange therefor for the matters and things set forth to be furnished, erected, constructed, made, and done by said defendant under said agreements of April 25, 1922,

and December 11, 1922, Exhibits "B" and "C" hereof.

28. Under color of said leases Exhibits "F" and "D" hereof, said defendant Pan American Petroleum and Transport Company, acting by itself and through its owned and controlled subsidiary, Pan American Petroleum Company, has been and is trespassing upon the lands described in paragraph 5 hereof, has extracted, taken, and received crude oil and gas from Naval Petroleum Reserve No. 1, and continues to drill wells and to extract therefrom oil and gas, and thereby has defrauded and continues to defraud the United States of America. Under color of said leases said defendants will continue to drill wells and to remove oil and gas and will continue to trespass upon said lands unless and until restrained by your Honorable Court, and continuance of said trespasses and operations will work great and irreparable damage to plaintiff unless restrained.

29. Said agreements of April 25, 1922, Exhibits "B" and "E" hereof, and of December 11, 1922, Exhibit "C" hereof, and said leases of June 5, 1922, Exhibit "F" hereof, and of December 11, 1922, Exhibit "D" hereof, were obtained by bribery, were the result of said [15] unlawful conspiracy, were and are a fraud upon the United States of America, are illegal, null, void, and of no force or validity, by reason of the matters and things hereinabove more fully set forth, and for the further reason that the same were executed without authority in the officers of the United States who pur-

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ported to execute them, and were wholly unauthorized by law or any statute, and should be delivered up to the United States to be canceled.

30. Defendants should cease to trespass upon the lands described in paragraph 5 hereof, should deliver up said agreements of April 25, 1922, and of December 11, 1922, Exhibits "B," "E," and "C" hereof, and said leases of June 5, 1922, and of December 11, 1922, Exhibits "F" and "D" hereof, to be canceled, should make discovery of all that they and each of them have received under each and every of said agreements and leases, and should render to plaintiff a full, true, and accurate accounting of all oil and gas received by them or either of them under the terms of said agreements and leases, and of all matters and things and all items of account showing their and each of their transactions under said agreements and leases from the dates of said papers respectively.

31. Said leases of June 5, 1922, Exhibit "F" hereof, and of December 11, 1922, Exhibit "D" hereof, were made only and solely pursuant to said agreements of April 25, 1922, and of December 11, 1922, Exhibits "B," "E," and "C" hereof, and said transactions under said agreements, and said leases, and the writings themselves, [16] form but a single transaction and are so inextricably bound together that plaintiff cannot obtain full relief except by the joinder of both corporate defendants, who are in fact and in law but one defendant.

32. Wherefore plaintiff is without an adequate remedy at law, in that there is no remedy at law

as complete, practicable, and efficient to the end of prompt administration of justice as the remedy in equity, and the intervention of a court of equity will prevent a multiplicity of suits.

Plaintiff therefore prays:

(1) That your Honorable Court will grant a writ of injunction, temporary until final hearing and perpetual thereafter, enjoining and restraining the defendants and each of them, their officers, servants, agents, and employees, from further drilling wells or operating under said leases of June 5, 1922, and of December 11, 1922, or performing further work of any sort thereunder, or under any contract or order of any department of the United States pursuant to said leases.

(2) That your Honorable Court will appoint a receiver or receivers to take possession and control of the lands in the bill described and all property thereon situate, and of all oil and gas thereon produced, and in his or their discretion to sell and turn to account the same, and hold and store the same or safely hold the proceeds thereof pending the final termination of this cause and until the further order [17] of the Court in the premises. That your Honorable Court grant a final injunction directed to the defendants and each of them, their officers, servants, agents, and employees, enjoining and commanding them and each of them to cease from further trespassing upon the lands described in the bill, and to cease to harass and molest the plaintiff in the quiet and peaceable enjoyment thereof.

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(3) That your Honorable Court enter a decree declaring the said agreements of April 25, 1922, and December 11, 1922, and the leases of June 5, 1922, and of December 11, 1922, set forth in the bill, to be null, void, and of no effect.

(4) That your Honorable Court enter a decree enjoining and commanding the defendants, their officers, and directors, to surrender and deliver the said agreements and said leases to the proper officer of the United States of America to be canceled.

(5) That your Honorable Court will enter a decree that said defendants and each of them be required to make full, just, true, and complete account for all oil and other minerals produced and converted to their or either of their use, and for any waste committed by them or either of them under color or cover of said agreements of April 25, 1922, and December 11, 1922, and said leases of June 5, 1922, and December 11, 1922, and that judgment may be rendered against the defendants for the amount shown to be due by each of them to the United States of America by such accounting. [18]

(6) Such other and further relief as to your Honorable Court shall seem meet in the premises.

ATLEE POMERENE,

OWEN J. ROBERTS,

JOSEPH C. BURKE,

Solicitors for Plaintiff, United States of America.

United States of America,
District of Columbia,—ss.

Personally appeared before me, the undersigned, a notary public duly commissioned for the District of Columbia, Atlee Pomerene and Owen J. Roberts, special counsel for the United States, the plaintiff in the above cause, who, being duly sworn as to the truth of the allegations made in the above bill, say that they have read the foregoing bill and know its contents, and that so far as the matters therein stated are of their own knowledge, the same are true, and that as to all matters therein stated the same are true to the best of their knowledge, information, and belief.

ATLEE POMERENE.

OWEN J. ROBERTS.

Sworn to and subscribed before me this 16 day of April, A. D. 1924.

[Seal]

META A. FARELCONER,

Notary Public.

My commission expires Jan. 29, 1926. [19]

EXHIBIT "A."

EXECUTIVE ORDER.

Under the provisions of the Act of Congress approved February 25, 1920 (41 Stat. 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or

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any part of a claim upon which such wells have been drilled, and under authority of the Act of Congress approved June 4, 1920 (41 Stat. 912), directing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves, the administration, and conservation, of all oil and gas bearing lands in naval petroleum reserves Nos. 1 and 2, California, and naval petroleum reserve No. 3 in Wyoming and naval shale reserves in Colorado and Utah, are hereby committed to the Secretary of the Interior subject to the supervision of the President but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in cooperation with the Secretary or Acting Secretary of the Navy. The Secretary of the Interior is authorized and directed to perform any and all acts necessary for the protection, conservation, and administration of the said reserves subject to the conditions and limitations contained in this order and the existing laws or such laws as may hereafter be enacted by Congress pertaining thereto.

WARREN G. HARDING.

The White House, May 31, 1921.

Copy sent: Mr. Mendenhall, Survey. Comr. G. L. O. Director, Mines. [20]

EXHIBIT "B."

[Endorsed]: No. B-100-Eq. U. S. vs. Pan Am. Pet. & Tr. Co. U. S. Exhibit No. 124. Filed

Oct. 27, 1924. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk.

This agreement, made and entered into this 25th day of April, 1922, by and between the Pan-American Petroleum and Transport Company, a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at New York City, State of New York, party of the first part (hereinafter designated as the contractor), and The United States of America, acting in this behalf by the Acting Secretary of the Interior, and the Secretary of the Navy, party of the second part (hereinafter designated The Government), for themselves, their successors and assigns—

Witnesseth, That by virtue of authority contained in and the policy expressed by applicable acts of Congress, and in accordance with Proposal B of the contractor dated April 14, 1922, the parties hereto have mutually covenated and agreed, and by these presents do mutually covenant and agree to and with each other as follows:

Article I. The contractor for the consideration hereinafter mentioned and contained, and under penalty of a bond in the penal sum of two hundred fifty thousand dollars (\$250,000), hereby covenants and agrees to faithfully and fully furnish all such materials, labor, or both, or other things, as may be called for in said Proposal B, and the specifications, or plans or drawings, or any other paper or document relating thereto and which by attachment hereto are intended to be and are thereby made

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a part of this agreement, and all of which relate to and are considered to call for, the delivery by the contractor, at the United States naval station at Pearl Harbor, Territory of Hawaii, of one million five hundred thousand (1,500,000) barrels of fuel oil, and the furnishing by said contractor of storage facilities for said fuel oil. The Government hereby agrees to accept as the penal bond above provided for the personal bond of Mr. E. L. Doheny in the sum of two hundred fifty thousand dollars (\$250,000) but it reserves the right to call later for a corporate bond, when and if in the judgment of the Secretary of the Interior such bond shall be deemed necessary or advisable, provided that if the cost of furnishing such bond by the contractor exceeds fifty-two thousand eight hundred dollars (\$52,800), then that number of barrels of basic crude oil equivalent in value to such excess shall be added to the amount of the proposed sum hereinafter agreed upon. [21]

Article II. It is the intention of the parties hereto to effect an exchange of crude oil which is unsuitable for fuel for the United States Navy, and which is produced from naval petroleum reserves Nos. 1 and 2, in the State of California, said crude oil being the property of the Government, for fuel oil suitable for the use of the United States Navy, to be delivered by the contractor at the United States naval station at Pearl Harbor, Territory of Hawaii.

Article III. The contractor hereby agrees to furnish one million five hundred thousand (1,500,-

000) barrels of fuel oil delivered into storage facilities to be constructed and erected by the contractor according to the specifications dated March 1, 1922, hereto attached and made a part hereof, in consideration of the delivery to said contractor of the lump sum of five million eight hundred seventy-eight thousand nine hundred five (5,878,905) barrels of crude oil from California naval petroleum reserves Nos. 1 and 2 of from 14 to 17.9 degrees (Baumé) gravity or crude oil in such other quantity and quality as shall be of equal value, which lump sum shall be termed the proposal sum. It is hereby mutually understood and agreed that said proposal sum is based upon the November-December, 1921, published field price of California crude oil of from 14 to 17.9 degrees (Baumé) gravity (\$1.10 per barrel), which for the purposes of this agreement shall be termed the reference price of basic crude oil, and upon the November-December, 1921, market price of fuel oil at Bay Point, California (\$1.50 per barrel), which for the purposes of this agreement shall be termed the reference price of fuel oil.

It is further understood and agreed that if on the date of delivery of a given number of barrels of basic crude oil by the Government to the contractor, the published field price of basic crude oil has changed from the reference price of basic crude oil, the Government shall be credited on account of the proposal sum, with a number of barrels of basic crude oil which bears to the actual number of barrels delivered the ratio which the published field

price on that date bears to the reference price of basic crude oil.

The contractor agrees in lieu of deliveries of basic crude oil to accept crude oil of any other gravity, which for the purposes of this agreement shall be termed particular crude oil, in such amounts as the Government may deliver. For such deliveries the contractor will credit the Government on account of the proposal sum, with a number of barrels of basic crude which bears to the number of barrels of particular crude actually delivered, the ratio which the published field price of such particular crude on the date of delivery bears to the reference price of basic crude. [22]

It is further mutually understood and agreed that if on the date of delivery of a given amount of fuel oil by the contractor to the Government, the Bay Point, California, market price of fuel oil shall be higher than the reference price of fuel oil, there shall be added to the proposal sum an increment equal to the one hundred thousandth part of nine hundred and nine times the number of barrels in said delivery, multiplied by the number of cents by which the Bay Point, California, market price on such date is higher than the reference price of fuel oil.

It is further mutually understood and agreed that if on the date of delivery of a given amount of fuel oil by the contractor to the Government the Bay Point California market price of fuel oil shall be lower than the reference price of fuel oil, there shall be subtracted from the proposal sum a decrement

equal to the one hundred thousandth part of nine hundred and nine times the number of barrels in said delivery, multiplied by the number of cents by which the Bay Point California market price on such date is lower than the reference price of fuel oil.

The parties hereto mutually agree that the difference between credits and debits made by the contractor to the Government in barrels of basic crude oil on account of the proposal sum, for crude oil received by the contractor on the one hand and storage facilities constructed on the other, shall bear interest in barrels of basic crude oil at the rate of five per cent per annum determined on monthly balances; the proposal sum to be increased by the number of barrels of basic crude oil representing interest when the debits exceed the credits and diminished when the credits exceed the debits, provided, however, that no interest shall be calculated for debits on account of fuel oil delivered to the Government at Pearl Harbor, as distinguished from storage facilities constructed.

Article IV. The Government hereby agrees to deliver at the place of production, to the contractor, month by month, all of the royalty oil that may be furnished by its lessees in said naval petroleum reserves Nos. 1 and 2, until all claims of the contractor under this contract are satisfied.

Article V. In the event that production from the leases heretofore granted or which may be hereafter granted in said naval petroleum reserves Nos. 1 and 2 shall decrease to such an extent that the time of this contract shall be unduly prolonged, then the

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Government will, in the discretion of the Secretary of the Interior, grant additional leases on such lands as he may designate in naval petroleum reserve No. 1 as shall be sufficient to maintain total deliveries of royalty oil under this contract at the approximate rate of five hundred thousand barrels (500,000) per annum. [23]

Article VI. Upon the execution and delivery to the contractor of a copy of this contract, the Government agrees to deliver to said contractor, and the contractor agrees to take on account of the proposal sum aforesaid all royalty oil which has been accumulated from leases in naval petroleum reserves Nos. 1 and 2 and which is now being held in storage by certain pipe-line companies.

Article VII. All and every expense incident to the movement of the crude oil from the field and the movement of the fuel oil to storage shall be borne by the contractor, who shall be permitted to supply the fuel oil in storage at Pearl Harbor, Territory of Hawaii, in any amount he may elect, provided that the total amount required to be supplied under this contract be furnished and the transaction completed within the time that the Government has furnished sufficient royalty oil to pay for the fuel oil and storage facilities herein called for.

Article VIII. It is hereby mutually agreed that the fuel oil to be delivered by the contractor shall be jointly gaged and tested by the contractor and the Government in the storage facilities which are to be erected at Pearl Harbor, Territory of Hawaii, said gaging and testing to be governed by

the specifications for fuel oil attached hereto and made a part hereof. In the event of a disagreement between the Government and the contractor as to the results of said gaging and testing a referee shall be selected by the two parties, whose decision as to the question in dispute shall be final.

Article IX. In the event that the vessels of the contractor transporting fuel oil shall be delayed in discharging said fuel oil at the place of storage at Pearl Harbor, Territory of Hawaii, because of the acts or omissions of the Government or of its officers, agents, or employees, the contractor shall be allowed demurrage at the rates and under the conditions prevailing in commercial transactions, the amounts thus allowed to be calculated in barrels of oil and added to the proposal sum.

Article X. Should the number of concrete piles called for in connection with providing the storage facilities at Pearl Harbor be in excess of or less than the number indicated in the drawings and specifications, it is hereby mutually agreed that the amount by which the proposal shall be increased or decreased for each concrete pile in excess or less than the number indicated in the drawings, based on a length of 45 feet per pile, shall be one hundred twenty-two and seventy-three hundredths (122.73) barrels of basic crude oil. [24]

Should any of the concrete piles hereinabove referred to be in excess of or less than 45 feet in length, the parties hereto agree that the amount by which the proposal sum shall be increased or decreased for each linear foot in excess of or less than

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45 feet per pile shall be 4.55 barrels of basic crude oil for all increases, 2.73 barrels basic crude oil for all decreases, the measurement to be made of each separate pile and not upon the average length of piles in the entire structure or any part thereof.

If the actual dredging required in connection with providing the storage facilities shall differ in amount from that estimated in section 160 of the specifications it is hereby agreed that the amount per cubic yard (based on dredging as measured in place), by which the proposal sum shall be increased or decreased shall be six hundred thirty-six thousandths (0.636) of a barrel of basic crude oil.

It is further agreed that for any dredging that shall be found to consist of rock, the proposal sum shall be increased 4.55 barrels of basic crude oil per cubic yard, based on dredging as measured in place.

Article XI. It is further mutually understood and agreed that if during the life of this contract future leases shall be granted by the Government within that portion of California naval petroleum reserve No. 1, situated in townships 30 and 31 south, range 24 east, Mount Diablo base and meridian, the contractor shall first be called upon by the Secretary of the Interior to meet such drilling conditions and to pay such royalties as the Secretary may deem just and proper, and in the event of his acceptance of such conditions and of his agreement to pay such royalties, the contractor shall be granted by the Government a preferential lease on such tracts as the Secretary of the Interior may decide to lease. In the event of the failure of the contractor to agree to

the conditions and royalties as proposed by the Secretary of the Interior, then said lease or leases may be offered for competitive bidding, but the contractor shall have a right to submit a bid on equal terms with others engaged in said bidding. ✓

Article XII. The contractor hereby agrees that in the event of his effecting the construction and erection of the storage facilities herein called for at a less cost than three million one hundred and ninety-seven thousand and eighty-six barrels of basic crude oil at reference price he will give to the Government the benefit of this saving as determined by agreement between the contractor and the Secretary of the Interior by crediting such saving in barrels of basic crude oil on account of the proposal sum. [25] ✓

In witness whereof the undersigned have hereunto subscribed their names and affixed their seals on the day and year first above written.

PAN AMERICAN PETROLEUM &
TRANSPORT COMPANY.

J. M. DANZIGER, ✓

Vice-Pres.

Attest: O. D. BENNETT,

Secretary. ✓

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Two witnesses, with address to each signature:

GEO. W. JOHNSON, Jr.,
602 W. 146 St., N. Y. C.
W. A. O'NEILL,

107 Clermont Ave., Brooklyn, N. Y.,

As to J. M. Danziger and O. D. Bennett:

THE UNITED STATES OF AMERICA,

By EDWARD C. FINNEY, ✓

Acting Secretary of the Interior,

By EDWIN DENBY, ✓

Secretary of the Navy,

For and on Behalf of the United States of
America.

PROPOSALS FOR EXCHANGE OF NAVAL
OIL—ALTERNATE PROPOSAL B.

The Secretary of the Interior, Washington, D. C.

Sir: The following proposals are submitted, pursuant to the letter of March 7, 1922, of the First Assistant Secretary of the Interior.

Item. 1.—The Pan American Petroleum & Transport Co. hereby proposes to furnish 1,500,000 barrels of fuel oil delivered into storage facilities, which said company hereby proposes to construct and erect ✓ in 500 days in accordance with the plans and specifications issued by the Department of the Interior under date of March 1, 1922, hereto attached and made a part hereof, in consideration of the delivery to said company, from Government leases in naval petroleum reserves No. 1 and No. 2 in California, of the lump sum of 5,878,905 barrels of crude oil of from 14 to 17.9 degrees Baumé gravity, or crude oil

in such other quantity and quality as shall be of equal value, which lump sum we shall term the proposal sum.

The above proposal sum is based upon the November-December, 1921, published field price of crude oil of 14 to 17.9 degrees Baumé gravity, which we shall term the reference price of basic crude, and upon November-December, 1921, Bay Point market price of fuel (\$1.50 per barrel), which we shall term the reference price of fuel.

(1) If on the date of delivery of a given number of barrels of basic crude by the Government to the company, the [26] published field price of basic crude has changed from the reference price of basic crude, the Government shall be credited on account of the proposal sum with a number of barrels of basic crude which bears to the actual number of barrels delivered the ratio which the published field price on that date bears to the reference price of basic crude.

(2) The contractor agrees in lieu of deliveries of basic crude, to accept crude of any other gravity, which we shall term particular crude, in such amounts as the Government may deliver. For such deliveries the company will credit the Government on account of the proposal sum with a number of barrels of basic crude which bears to the number of barrels of particular crude actually delivered the ratio which the published field price of such particular crude on the date of delivery bears to the reference price of basic crude.

(3) If on the date of delivery of a given amount of fuel by the company to the Government, the Bay Point market price of fuel shall be higher than the reference price of fuel, there shall be added to the proposal sum an increment equal to the one hundred-thousandth part of nine hundred and nine times the number of barrels in said delivery, multiplied by the number of cents by which the Bay Point market price on such date is higher than the reference price of fuel.

If on the date of delivery of a given amount of fuel by the company to the Government the Bay Point market price of fuel shall be lower than the reference price of fuel, there shall be subtracted from the proposal sum a decrement equal to the one hundred-thousandth part of nine hundred and nine times the number of the barrels in said delivery, multiplied by the number of cents by which the Bay Point market price on such date is lower than the reference price of fuel.

(4) The company proposes that the fuel shall be gauged jointly by the company and the Government or that an independent gauger be agreed upon, the fuel to be gauged and tested for quantity and quality at the tanks where delivery is made.

(5) (a) As called for in the proposal, the amount by which the proposal sum shall be increased or decreased for each concrete pile in excess of or less than the number indicated in the drawings, based on a length of 45 feet per pile, is 122.73 barrels of basic crude.

(b) As called for in the proposal, the amount by

which the proposal sum shall be increased or decreased for each linear foot of concrete pile in excess of or less than 45 feet per pile is, amount to be added, 4.55 barrels of basic crude; amount to be deducted, 2.73 barrels of basic crude.

NOTE.—Our bid upon this item is based upon each separate pile and not upon average length of piles in the entire structure or any part of it. [27]

The difference between the amount to be added and the amount to be deducted is due to the necessity of increasing the size of piles on account of additional length with consequent increase in amount of reinforcement and increased cost in handling and driving.

(c) As called for in the proposal, the amount per cubic yard (based on dredging as measured in place) by which the proposal sum shall be increased or decreased as the actual dredging required may differ in amount from that estimated in the bid, as called for in section 160 of the specifications, is 0.636 barrel of basic crude.

(d) As called for in the proposal, the amount per cubic yard (based on dredging as measured in place) by which the proposal sum shall be increased for any dredging which shall be found to consist of rock is 4.55 barrels of basic crude.

(e) As called for in the specifications, the type of reinforcement for concrete in quay wall will be square deformed steel bars satisfactory to the Navy Department.

(6) The company proposes that the difference between credits and debits made by it to the Govern-

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ment in barrels of basic crude on account of the proposal sum for crude oil received by the company on the one hand and storage facilities constructed on the other, shall bear interest in barrels of basic crude at the rate of 5 per cent per annum, determined on daily balances. The proposal sum will be increased by the number of barrels of basic crude representing interest when the debits exceed the credits and diminished when the credits exceed the debits, but debits for fuel delivered to the Government, as distinguished from storage facilities constructed, shall not be included in interest calculations.

(7) The company proposes in the event that it succeeds in effecting the construction and erection of the storage facilities for a lesser cost than represented by the number of barrels of basic crude entering into its estimate for such construction and erection, on which the proposal sum is based, that it will give to the Government the benefit of the saving by crediting such saving in barrels of basic crude on account of the proposal sum.

(8) The whole of this proposal B is made on the condition that if it is accepted the Secretary of the Interior will agree that the company be given preferential right to lease from the Government any lands within naval petroleum reserve No. 1, California, which the Government may decide to lease.

Very respectfully yours,

PAN AMERICAN PETROLEUM &
TRANSPORT CO.

J. M. DANZIGER,
Vice-President. [28]

EXHIBIT "C."

This agreement made and entered into this 11th day of December, 1922, by and between the Pan American Petroleum & Transport Company, a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in New York City, State of New York, party of the first part (hereinafter designated as the contractor) and the United States of America, acting in this behalf by the Secretary of the Interior and the Secretary of the Navy, party of the second part (hereinafter designated the Government) for themselves, their successors, and assigns.

Witnesseth, whereas a certain contract was entered into by the above-named parties dated April 25, 1922, providing for the exchange of royalty crude oil belonging to the Government and produced from naval reserves Nos. 1 and 2 in the State of California for fuel oil in storage at Pearl Harbor, T. H., including tanks and incidental facilities;

And whereas, in accordance with the plans of the General Board of the Navy, it is now desired to fill said tanks as promptly as they are individually completed and also to procure for the Navy additional amounts of fuel oil and other petroleum products in storage at Pearl Harbor, T. H., and elsewhere, and the Secretary of the Navy in his letter of November 29, 1922, copy of which is hereto attached and made a part hereof, has requested the Secretary of the Interior as administrator of the naval petro-

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leum reserves to arrange for such additional fuel oil and other petroleum products in storage through exchange therefor of additional royalty crude oil belonging to the Government in said California naval reserves, the probable cost of the additional products and storage immediately planned for being estimated at fifteen million dollars, more or less;

And whereas said contractor has expressed a willingness to furnish the desired amounts of fuel oil and other petroleum products in storage in exchange for crude oil in the field;

And whereas the furnishing of such additional amounts of fuel oil and other products in storage on the basis of exchange for the Government royalty crude oils can not be accomplished from the present leases in the California naval reserves;

And whereas under the terms of said contract of April 25, 1922, contractor is granted preferential right to leases to certain lands in naval reserve No. 1 on such terms and conditions [29] as may be determined by the Secretary of the Interior;

And whereas contractor is planning to provide refinery facilities at Los Angeles, California, for 10,000 barrels per day, to be increased to 20,000 per day as soon as the situation justifies, together with pipe lines connecting the leases in the field and the refinery and docks, and to erect storage to the amount of 2,000,000 barrels or more;

Now, therefore, the following agreement, supplemental to the said contract of April 25, 1922, is hereby entered into by and between the parties hereto:

Article I. Contractor agrees for the considerations herein mentioned and contained, and under penalty of the bond furnished in connection with said above-mentioned contract of April 25, 1922, in the sum of \$250,000, which bond is hereby made to guarantee contractor's compliance with the terms and conditions of this present agreement, to which the guarantor on said bond, E. L. Doheny, has assented in the agreement signifying such assent hereto attached to—

1. Provide the fuel oil required to be furnished under said contract of April 25, 1922, and to fill the storage tanks therein called for when, and as directed by the Secretary of the Interior.

2. Construct for the Government at Pearl Harbor, T. H., such storage facilities for crude oil products in addition to those covered by the above-mentioned contract of April 25, 1922, as and when the Government may require, up to 2,700,000 barrels, and in accordance with such plans and specifications as the Government may furnish, such facilities to be constructed for and furnished to the Government at the cost thereof and without profit to contractor. Contractor further agrees, if requested by the Government, to complete the storage facilities referred to in this paragraph within two years from date of receipt of Government's request accompanied by plans and specifications. Contractor will call for bids for the facilities referred to in this section and section 7 of this article and award contracts to the lowest responsible bidders, subject to the supervision and direction of the Gov-

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ernment, or will handle the construction work in such other manner as the Government may desire. ^u

3. Furnish fuel oil in accordance with the specifications attached to the aforesaid contract of April 25, 1922, and deliver same into the storage facilities referred to in the preceding paragraph hereof and to deliver said fuel oil into the storage facilities as and when they are completed unless otherwise directed by the Government, irrespective of whether or not at that time the Government shall have delivered to contractors sufficient royalty crude oil to reimburse contractor; contractor to charge Government for such fuel oil delivered to [30] Pearl Harbor, T. H., at the Baypoint, California, market price thereof at date of delivery into contractor's or other tankers, plus the cost of transportation thereof from Baypoint, California, to Pearl Harbor, T. H., in contractor's or other tankers, such transportation charge to be at going rates.

4. Furnish the petroleum products other than fuel oil when required by the Navy for storage at Pearl Harbor, T. H., and not exceeding in amount the quantities mentioned in the above referred to letter of the Secretary of the Navy dated November 29, 1922, such products to conform to specifications to be furnished by the Government and the Government to be charged by contractor for such products on the basis of the contractor's current sales price for such products of like grade and in similar quantity, and in the event that it becomes necessary for the contractor to purchase any such products for purpose of making this exchange such purchased

products shall be valued at their net cost to him, the Government to be charged by contractor for transporting such products to Pearl Harbor, T. H., in contractor's or other tankers at going rates. In no case shall the charge to the Government for these petroleum products exceed the then current prices under Navy contracts for similar products, and contractor shall have the privilege to fill these requirements, if he so elects, through contracts placed by the Navy Department.

5. Furnish without charge until expiration of this contract storage for 1,000,000 barrels of fuel oil adjacent to refinery at Los Angeles, California, and place same in the custody of the Government; and to fill same with fuel oil for the Navy at such time as the Government's royalty oil from the California naval reserves shall have been paid for all work done and crude-oil products furnished at Pearl Harbor, and shall therefore be available as exchange for said 1,000,000 barrels of fuel oil, and to bunker Government ships from said 1,000,000 barrels of fuel oil at cost, and also to carry during the life of this contract all the royalty oils derived from the leases in naval petroleum reserves Nos. 1 and 2 from said reserves to the refinery or tidewater at Los Angeles, California, free from any pipe-line charge.

6. To maintain subject to demands of the Navy, for a period of fifteen years from the date of this contract 3,000,000 barrels of contractor's C grade fuel oil, specifications for which are hereto attached and form a part of this contract, at Atlantic coast points, oil from such supply to be drawn by the

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Navy in case it is desired from the following storage depots of contractor, each of the respective storage capacities stated, or from any additional storage which may be constructed by the contractor in the same region, the [31] Government to be promptly notified by contractor of all new storage so constructed:

* * * * *

Upon written notice from the Government contractor will within thirty days set aside and hold for the Navy any amount of such fuel oil up to 60% of the capacity of any of such depots, not exceeding a total of 3,000,000 barrels, said 60% to be in tanks which at or before the expiration of the notice referred to will be allocated to the Navy and be subject to such supervision and guarding as the Navy may demand while so allocated: Provided, That after such oil is so set aside the Government shall pay to contractor one cent per barrel per month as storage charge until and unless such oil is purchased or released by the Navy and such allocation shall not be maintained for a longer period than six months.

Provided further, That if and when such oil is purchased by the Navy contractor shall be paid therefor at market prices from current available Navy funds, and no charge shall be made against the Government under this section except for and on account of oil so set aside.

7. Furnish such reasonable amount of crude-oil products and storage facilities therefor at such points as shall be designated by the Government

under terms and conditions similar to those provided in sections 2, 3, and 4 of this article, when the royalty oils delivered by the Government to the contractor shall have been sufficient to reimburse contractor for all claims on account of oil furnished and work done at Pearl Harbor, T. H., as provided for in the above-mentioned contract of April 25, 1922, and for the additional work and crude-oil products hereinbefore covered specifically by this present contract.

8. Give the Navy the privilege of purchasing any additional available fuel oil produced from Government lands in the California naval reserves which it may require above the amount which it is entitled to in exchange for its royalties, at 10% less than market price at tidewater, said market price to be determined from time to time in such manner as may hereafter be agreed upon by the parties hereto, payment therefor to be made from current available Navy funds.

9. Sell to the Navy, manufactured products from the California refinery, to wit: Gasoline, kerosene, lubricating oils, greases, etc., at 10% less than market prices, said market prices to be determined from time to time in such manner as may hereafter be agreed upon by the parties hereto, payment therefor to be made from current available Navy funds. [32]

Article II. For the considerations herein mentioned and contained, to wit, the furnishing of oils in storage and facilities and options as specified above, the Government agrees:

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A. To deliver in exchange to contractor all royalty oil, gas, and casing-head gasoline owned by it and produced or to be produced from naval reserves Number 1 and 2 in the State of California, after a sufficient quantity of said crude oil therefrom is delivered to contractor to satisfy the Government's obligations under the existing contract of April 25, 1922, above referred to, until the Government's obligations under this instant contract are discharged, and in any event for a period of 15 years from the date of the expiration of said contract of April 25, 1922, the Government to be given credit by contractor for such crude oil delivered by the Government at the published field price thereof on date of delivery and for such gas and casing-head gasoline at the prices and under the conditions fixed in the various leases any surplus of Government credits thus accruing are to be satisfied by delivery of fuel oil or other petroleum products, by construction of additional storage facilities, or to be payable in cash, as the Government may at that time elect.

B. To lease, and it does hereby lease, in accordance with the contract of lease dated this day, and hereto attached, to the Pan American Petroleum Company, a corporation existing under and by virtue of the laws of the State of California, and having its principal place of business in the city of Los Angeles, California, and which corporation is a wholly owned subsidiary of contractor, Government lands in naval reserve Number 1 in the State of California described in said contract of lease.

Article III. It is mutually agreed by and between the parties hereto that the gaging and testing of all crude-oil products to be delivered hereunder shall be in accordance with the provisions of article 8 of the above-mentioned contract of April 25, 1922, except that upon notice by the Government such gaging and testing shall be done at point of shipment.

It is further agreed by and between the parties hereto that the difference between credits and debits made by contractor to the Government for crude oil received by the contractor on the one hand and expenditures made by contractor for storage facilities and crude-oil products delivered by him on the other shall bear interest at the rate of five per cent per annum, determined on monthly balances; provided that credits made by contractor for crude oil delivered by Government shall first apply in reduction of any interest due contractor by Government, and provided that this agreement shall modify that portion of article 3 of the above-mentioned [33] contract of April 25, 1922, referring to interest on debits on account of fuel oil delivered at Pearl Harbor, T. H., as distinguished from storage facilities constructed, to the effect that interest on said debits shall be allowed contractor.

It is further agreed that no Member or Delegate to Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to

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any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the codification of the penal laws of the United States, approved March 4, 1919 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA.

By ALBERT B. FALL,
Secretary of the Interior.

By EDWIN DENBY,
Secretary of Navy.

PAN AMERICAN PETROLEUM &
TRANSPORT CO.

By E. L. DOHENY,
President.

Witnesses:

JOS. J. COTTEE.

J. C. ANDERSON. [34]

EXHIBIT "D."

Serial ———

LEASE OF OIL AND GAS LANDS UNDER
THE ACT OF JUNE 4, 1920.

This indenture of lease, entered into, in triplicate, as of the 11th day of December, 1922, by and between the United States of America, acting in this behalf by the Secretary of the Interior of the United States and the Secretary of the Navy of the United States, party of the first part, hereinafter

called the lessor, and the Pan American Petroleum Co., a corporation of the State of California, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 4, 1920, entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1921, and for other purposes,"

Witnesseth:

Sec. 1. Purposes.—The lessor in consideration of royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits for a period of 20 years from the date hereof and so long thereafter as oil or gas is produced in paying quantities from said lands in or under the following-described tract of lands situated in the naval petroleum reserve No. 1, California, and more particularly described as follows:

Mount Diablo base and meridian—T. 30 S., R. 22 E., all of sec. 24. T. 30 S., R. 23 E., all of sec. 10, all of sec. 12, all of secs. 14 and 15, north $62\frac{1}{2}$ acres of NW. $\frac{1}{4}$ of sec. 16, NE. $\frac{1}{4}$, S. $\frac{1}{2}$ sec. 17, all of sec. 18, NE. $\frac{1}{4}$, S. $\frac{1}{2}$ sec. 19, all of secs. 20 to 30, inclusive, all of secs. 32 to 35, inclusive. T. 31 S., R. 23 E., all of secs. 1 to 4, inclusive, all of secs. 10 to 12, inclusive, N. $\frac{1}{2}$ of sec. 13, all of sec. 14. T. 30 S., R. 24 E., all of sec. 18, all of sec. 20, all of sec. 28, all of sec. 30, all of sec. 32, W. $\frac{1}{2}$, W. $\frac{1}{2}$ E. $\frac{1}{2}$, west 147 feet of E. $\frac{1}{2}$ E. $\frac{1}{2}$ of sec. 34. T. 31 S., R. 24 E., S.

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$\frac{1}{2}$ of sec. 2, S. $\frac{1}{2}$, NW. $\frac{1}{4}$ of sec. 3, all of secs. 4 to 6, inclusive, N. $\frac{1}{2}$, SE. $\frac{1}{4}$ of sec. 7, all of secs. 8 to 12, inclusive, all of sec. 18, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof and also the right to construct and maintain upon, across, and under [35] any other public lands under the laws and regulations pertaining to the construction and maintenance of pipe lines across the public domain, such pipe line or pipe lines as may be necessary for the carrying out of the purposes hereof, together with such buildings, pumping stations, tanks, and other structures as may be necessary to the efficient and economical operation thereof.

Sec. 2. That in consideration of the foregoing the lessee hereby agrees:

(a) Bond.—To furnish a bond with approved surety in the penal sum of twenty-five thousand dollars (\$25,000), conditioned upon compliance with the terms of the lease.

(b) Wells.—To proceed with due diligence to drill a sufficient number of wells spaced in accordance with good practice; to produce all oil and gas that is practicable, with due regard to economy from the lands leased to the party of the second part and hereinbefore described in section 1: Provided, That lessee shall not be required to operate, including offset drilling, more than 10 strings of tools at any one time unless it shall be necessary to op-

erate more than 10 strings of tools in order to comply with the requirements hereinafter contained in this paragraph with respect to the offset drilling. The lessee further agrees to drill all necessary wells to offset the wells of others on adjoining land or deposits not the property of the United States, and on adjoining land operated under Government lease at 5 per cent royalty: Provided, however, That the lessee shall not be required to drill an offset to any producing well which does not produce at least an average of fifty (50) barrels per day for a period of 60 days after such well has been producing for 30 days: And provided further, That this offset provision does not apply to wells now drilled, or that may be drilled, on Government land located within the boundaries of naval reserve No. 1; to maintain in a state of production all wells producing oil or gas in paying quantities.

(c) Royalty and rents.—To pay the lessor during the continuance of this lease a royalty on all oil and gas produced from the land leased herein (except oil or gas used for development and production purposes on said land or unavoidably lost), as follows:

(1) For all oil produced of 30° Baumé or over:	Per cent.
On that portion of the average production per well not exceeding 50 barrels per day for the calendar month	12½
On that portion of the average production per well of more than 50	

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barrels and not more than 100 barrels per day for the calendar month $16\frac{2}{3}$

On that portion of the average production per well of more than 100 barrels and not more than 150 barrels per day for the calendar month 20
[36]

- (1) For all oil produced of 30° Baumé or over—Contd. Per cent.

On that portion of the average production per well of more than 150 barrels and not more than 200 barrels per day for the calendar month 25

On that portion of the average production per well of more than 200 barrels and not more than 500 barrels per day for the calendar month 30

On that portion of the average production per well of more than 500 barrels per day for the calendar month 35

- (2) For all oil produced of less than 30° Baumé:

On that portion of the average production per well not exceeding 50 barrels per day for the calendar month $12\frac{1}{2}$

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month $14\frac{1}{2}$

On that portion of the average production per well of more than 100 barrels and not more than 150 barrels per day for the calendar month .	16 $\frac{2}{3}$
On that portion of the average production per well of more than 150 barrels and not more than 200 barrels per day for the calendar month.	20
On that portion of the average production per well of more than 200 barrels and not more than 500 barrels per day for the calendar month	25
On that portion of the average production per well of more than 500 barrels per day for the calendar month	30

Only wells which have a commercial production during at least part of the month shall be considered in ascertaining the average production above provided for the purpose of computing the royalty.

The lessee agrees to pay and deliver to the lessor as royalties under this lease a royalty on all gas and casing-head gasoline produced and sold from said lease, or used other than for drilling, production, and operation of the lease or unavoidably lost, as follows:

On gas, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, 12 $\frac{1}{3}$ per cent of the value thereof in the field where produced when the average production per day for the calendar month from the land leased

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is less than 3,000,000 cubic feet, and $16\frac{2}{3}$ per cent when the average daily production is 3,000,000 cubic feet or over.

On casing-head gasoline, $16\frac{2}{3}$ per cent of the value of the casing-head gasoline extracted from the gas produced and sold computed on the basis provided for in the operating regulations.

The value in the field where produced of gas and casing-head gasoline for royalty purposes, unless such gas or casing-head gasoline is disposed of under an approved sales [37] contract or other method as provided in subdivision (d) of this section shall be as fixed by the Secretary of the Interior.

In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on both of such values.

The lessor reserves the right to take the oil, gas, and casing-head gasoline in kind or to accept payment therefor. When the royalty oil is paid in kind such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced, unless otherwise agreed to by the parties hereto, at such times as may be required by the lessor: Provided, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: And provided further, That the said lessee shall be in no manner responsible or held liable for the loss or destruction of such oil in storage from causes over which the

lessee has no control; such royalties, whether in value or kind, shall be subject to reduction whenever the average daily production of any oil well shall not exceed 10 barrels per day if in the judgment of the lessor the wells can not be successfully operated upon the royalties fixed herein.

The lessee agrees that no drilling shall be done without the consent of the lessor first had and obtained on Government land within naval reserve No. 1 located west of the range line dividing range 24 east and range 23 east, excepting on sections 24, 25, 26, and 35, all in township 20 south, range 23 east, and sections 1 and 2, township 31 south, range 23 east, which sections may be drilled by the lessee. The lessee agrees to start drilling a sufficient number of wells properly to protect the aforesaid six sections from further drainage, as set forth in paragraph (b), section 2, hereof, such drilling to be commenced within a reasonable time: Provided, however, That the lessee is entitled and shall be required to drill a sufficient number of wells properly to protect any area within the lands covered by this lease lying west of the range line dividing said ranges 23 and 24 east, which may be drained from offset wells located on land not included in naval petroleum reserve No. 1, as set forth in paragraph (b), section 2, hereof.

The lessor and the lessee agree that the following described lands covered by this lease, to wit, S. $\frac{1}{2}$ sec. 28, SE. $\frac{1}{4}$ sec. 30, all of sec. 32, W. $\frac{1}{2}$ sec. 34, Tp. 30 S., R. 24 E., NW. $\frac{1}{4}$ sec. 3, N. $\frac{1}{2}$ sec. 4, N. $\frac{1}{2}$ sec. 5, NE. $\frac{1}{4}$ sec. 6, Tp. 31 S., R. 24 E., shall

continue subject to the existing agreement between the Secretary of the Interior and the Pacific Oil Co. with respect to drilling upon said land: Provided, however, That upon request of the lessee the Secretary of the Interior will give to the Pacific Oil Co. the six months' notice provided for in said [38] agreement, and upon the expiration of six months after the giving of such notice the lessee shall have the same rights with respect to drilling, etc., upon said lands as upon the other lands covered by this lease lying east of the range line dividing aforesaid ranges 23 and 24 east.

The lessor and lessee agree that for the purpose of supervision of drilling for and production of oil and gas and the computation of royalties the practices adopted by the Department of the Interior in the supervision of work under the act of Congress of February 25, 1920 (Public, No. 146, 1921), as set forth in the following:

1. Plan for conducting work under operating regulations to govern the production of oil and gas under the act of February 25, 1920 (Public, No. 146, 1921).

2. Circular No. 5, April 8, 1922, Department of the Interior, Bureau of Mines, method of determining the producing wells on a lease or permit for purposes of computing Government royalty. (Signed) F. B. Tough, supervisor oil and gas operations.

3. Leasing circular No. 3D, schedule adopted for royalties on gas and casing-head gasoline from Government leases under leasing act (Public, 146)

where royalties are not specified in lease or special contract with the Government shall, in so far as applicable, be applied to this lease.

The lessee further agrees:

(d) Sales contracts.—To file with the Secretary of the Interior copies of all sales contracts for the disposition of oil and gas and casing-head gasoline produced hereunder except for production purposes on the land leased, and in the event the United States shall elect to take its royalties in money instead of oil or gas, not to sell or otherwise dispose of the products of the land leased except in accordance with a sales contract or other method first approved by the Secretary of the Interior.

(e) Monthly statements.—To furnish monthly statements in detail in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and gas produced and saved during the preceding calendar month as the basis for computing the royalty due the lessor. The leased premises and all wells, improvements, machinery, and fixtures thereon or connected therewith and all books and accounts of the lessee shall be open at all reasonable times for the inspection of any duly authorized officer of the department.

(f) Plat and reports.—To furnish when and at such times as the Secretary of the Interior shall require, in the manner and form prescribed by the Secretary of the Interior, a plat showing all development work and improvements on the leased lands and other related information, with a report

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as [39] to all buildings, structures, or other works placed in or upon said leased lands.

(g) Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log or copy thereof shall be furnished to said lessor on demand.

(h) Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessees to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining,

drilling, and related productive operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste and preservation of the property and the health and safety of workmen, and on failure to do so the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph: Provided, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(i) Taxes and wages—Freedom of purchase.—To pay when due all taxes lawfully assessed and levied under the laws of the State upon improvements, oil and gas produced from the lands, hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(j) Assignment.—This lease or any interest therein, as to all or any part of the lands covered thereby, may be assigned or sublet by the lessee, subject to the approval and consent [40] in writing, of the Secretary of the Interior first had and obtained.

Sec. 3. The lessor expressly reserves:

(a) Rights reserved—Easements and rights of way.—The right to permit for joint or several use

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easements or rights of way upon, through, or in the lands leased.

(b) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing laws or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(c) Helium.—The lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver at the well all gas containing same, or portion thereof, desired, to the lessor in the manner required by the lessor for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of the gas produced from the well to the purchaser thereof: Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Sec. 4. Surrender and termination of lease.—The lessee may, on consent of the Secretary of the Interior, first had and obtained in writing, sur-

render and terminate this lease upon payment of all royalties and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Sec. 5. Purchase of materials, etc., on termination of lease.—Upon expiration of this lease or the earlier termination thereof pursuant to the last preceding section, the lessee shall exercise due diligence in the removal of such materials, tools, machinery, appliances, structures, and equipment as the lessee shall elect: Provided, however, That the lessee shall not have the right to remove the casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Such materials, tools, machinery, [41] appliances, structures, and equipment which the lessee has not removed or has indicated within a reasonable period will not be removed from the land may be purchased by the lessor or another lessee on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen.

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Sec. 6. Judicial proceedings in case of default.—If the lessee shall make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations, promulgated and in force at the date hereof, and such default shall continue for 90 days after service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture or for the said cause occurring at any other time.

Sec. 7. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon and every benefit shall inure to the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

Sec. 8. Unlawful interest.—It is further agreed that no Member or Delegate to Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States and sections

114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1919 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so as the same may be applicable.

In witness whereof:

THE UNITED STATES OF AMERICA,

By ALBERT B. FALL,

Secretary of the Interior.

By EDWIN DENBY,

Secretary of the Navy.

PAN AMERICAN PETROLEUM CO.

By E. L. DOHENY,

Chairman.

Witnesses to signature:

JOS. J. COTTER.

J. C. ANDERSON. [42]

EXHIBIT "E."

April 25, 1922.

Mr. J. J. Cotter,

Pan American Petroleum & Transport Co.,

New York, N. Y.

Dear Mr. Cotter: In your proposals (A) and (B) of April 14, 1922, under each of which your bid was the lowest received by the Government, your company submitted two bids for the erection and construction of storage facilities at Pearl Harbor, T. H., and the filling of these with fuel oil. In proposal (B) you offer to accept an amount of royalty crude oil for fulfilling the contract, which expressed in money was \$235,184.40 less than the

amount in proposal (A) and your company offered to give the Government in addition any saving in the cost of construction under the amount estimated, provided that the Government would give the company preferential right to lease certain lands in naval petroleum reserve No. 1, California.

It is evident from our conversation of April 18 that your interpretation of preferential right was to the effect that the Pan American Petroleum & Transport Co. desired the right to lease certain specified land in naval petroleum reserve No. 1 as well as preferential right to lease other land in naval petroleum reserve No. 1 to the extent described in Article XI of contract. It is also my understanding from your conversation that unless the Pan American Petroleum & Transport Co. could get a lease to certain lands, your company would not desire to enter into a contract under the terms outlined in proposal (B) and preferred the government would accept proposal (A).

The Department of the Interior looks favorably upon proposal (B) for the following reasons: (1) It provides for an immediate and certain saving to the Government of \$235,184.40 over proposal (A). (2) You suggest that it gives opportunity to effect an additional possible saving of a considerable amount should the contractor succeed in erecting the storage facilities for less than the amount estimated.

It is my understanding that unless you secure definite assurance from the department that your company would obtain leases for certain tracts

in naval reserve No. 1 the Pan American Petroleum & Transport Co. would prefer not to enter into a contract as outlined in proposal (B). In order that the Government may take advantage of a contract [43] embodying the terms outlined in proposal (B), I wish to advise you that the Department of the Interior will agree to grant to the [Pan American Petroleum & Transport Co. within one year from the date of the delivery of a contract relative to the Pearl Harbor project leases to drill the following tracts of land: The NE. $\frac{1}{4}$ of sec. 3, T. 31 S., R. 24 E., and the strip of land lying in the east half of sec. 34, T. 30 S., R. 24 E., bounded on the east by the tract of land to be leased to the Belridge Oil Co..

The rate of royalty which the department will require on the two tracts of land referred to above will not be greater than the following:

For all oil produced of less than 30° Baumé:

	Per cent
On that portion of the average production per well not exceeding 20 barrels per day for the calendar month	121 $\frac{1}{2}$
On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month	14 $\frac{1}{2}$
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	16 $\frac{2}{3}$

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On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month	20
On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month	25
On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month	30
On that portion of the average production per well of more than 400 barrels per day for the calendar month.....	35

Respectfully,

EDWARD C. FINNEY,

Acting Secretary.

EDWIN DENBY,

Secretary of the Navy. [44]

EXHIBIT "F."

DEPARTMENT OF THE INTERIOR.

General Land Office.

Serial Visalia 010188.

LEASE OF OIL AND GAS LANDS UNDER
THE ACT OF JUNE 4, 1920 (41 STAT. 812.)

This Indenture of Lease, entered into, in triplicate,
as of the 5th day of June, A. D. 1922, by and
between the United States of America, party of
the first part, hereinafter called the lessor, acting

in this behalf by the Secretary of the Interior, and PAN AMERICAN PETROLEUM & TRANSPORT COMPANY, a corporation organized under the laws of the State of Delaware, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the Act of Congress approved June 4, 1920 (41 Stat. 812), making appropriations for the naval service and other purposes, WITNESSETH:

Sec. 1. Purposes.—That the lessor in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following-described tract of land situated in the County of Kern, California, and more particularly described as follows: Northeast quarter (NE. $\frac{1}{4}$) of section three (3), township thirty-one (31) south, range twenty-four (24) east, of the Mount Diablo Meridian, containing 160 acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, for a period of twenty (20) years, with the preferential right in the lessee to renew this lease for successive periods of ten (10) years, upon such reasonable terms and conditions as may be

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prescribed by the lessor, unless otherwise provided by law at the time of the expiration of such periods.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) Bond.—To furnish a bond with approved corporate surety in the penal sum of \$5,000, conditioned upon compliance with the terms of the lease. [45]

(b) Wells.—To start drilling one well within 90 days from the date the lease is granted and to keep one string of tools in continuous operation thereafter until all the territory has been fully developed, so long as the initial average daily production of each additional well shall amount to at least 100 barrels for the first 30 days after completion thereof and allowing not more than 60 days to elapse between the end of such production test period and the commencement of the next well; but the lessee shall not be required to drill nearer than 660 feet to any other completed well on the same parcel of land. If a well on any such parcel of land shall fail to produce a daily initial average of 100 barrels as aforesaid when operated with diligence and in good faith, the lessee shall have the right to discontinue drilling on said parcel, in which case the lessee agrees, upon demand of the Secretary of the Interior, to surrender the undeveloped portion of said parcel. If any portion of said parcel is so surrendered, the lessor agrees not to permit drilling to be done on said surrender parcel within 660 feet of a well owned or operated by the lessee under the lease to be granted. No well

shall be drilled within 200 feet of the boundary lines. Drilling shall start on the northeast corner location of the tract.

(c) Royalties and rents.—To pay the lessor in advance, beginning with the date of the execution of this lease, a rental of one dollar per acre per annum during the continuance thereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty on all oil and gas produced from the land leased herein (except oil or gas used for production purposes on said land or unavoidably lost), as follows:

(1) For all oil produced of 30° Baumé or over:

Per cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month . . . 12½

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month 16⅔

On that portion of the average production per well of more than 50 barrels per day and not more than 100 barrels per day for the calendar month 20

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 25

On that portion of the average production per well of more than 200 bar-

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rels and not more than 300 barrels per day for the calendar month 30

On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month 35

On that portion of the average production per well of more than 400 barrels per day for the calendar month .. 45
[46]

(2) For all oil produced at less than 30° Baumé:
Per cent.

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month 12½

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month..... 14½

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month 16⅔

On that portion of the average production per well of more than 100 barrels and not more than 200 barrels per day for the calendar month 20

On that portion of the average production per well of more than 200 barrels and not more than 300 barrels per day for the calendar month 25

On that portion of the average production per well of more than 300 barrels and not more than 400 barrels per day for the calendar month 30

On any portion of the average production per well of more than 400 barrels per day for the calendar month 35

Only wells which have a commercial production during at least part of the month shall be considered in ascertaining the average production above provided for; and the Secretary of the Interior shall determine what are commercially productive wells under this provision.

The lessor reserves the right, upon thirty days' notice, to take the royalty in cash or in kind.

(3) On gas and casing-head gasoline:

On gas, whether same shall be gas from which the casing-head gasoline has been extracted or otherwise, $12\frac{1}{2}$ per cent of the value thereof in the field where produced where the average production per day for the calendar month from the land leased is less than 3,000,000 cubic feet, and $16\frac{1}{2}$ per cent where the average daily production is 3,000,000 cubic feet or over.

On casing-head gasoline, $16\frac{1}{2}$ per cent of the value of the casing-head gasoline extracted from the gas produced and sold, computed on the basis provided for in the operating regulations.

The value in the field where produced, of gas and casing-head gasoline, for royalty pur-

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poses, unless such gas or casing-head gasoline is disposed of under an approved sales contract or other method as provided in subdivision (d) of this section, shall be as fixed by the Secretary of the Interior.

In cases where the gas produced and sold has a value both for casing-head gasoline content and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on both of such values.

When paid in value, such royalties shall be due and payable monthly on the 15th of each calendar month following the calendar month in which produced, to the Receiver of Public Moneys of the land district in which the land is situated; when paid in kind, such royalty oil shall be delivered in [47] tanks provided by the lessee on the premises where produced, unless otherwise agreed to by the parties hereto, at such times as may be required by the lessor: Provided, That the lessee shall not be required to hold such royalty oil in storage longer than thirty days after the end of the calendar month in which said oil was produced: And provided further, That the said lessee shall be in no manner responsible or held liable for the loss or destruction of such oil in storage from causes over which the lessee has no control; such royalties, whether in value or kind, shall be subject to reduction whenever the average daily production of any oil well shall not exceed ten (10) barrels per day, if in the

judgment of the lessor the wells can not be successfully operated upon the royalties fixed herein.

(d) Sales contracts.—To file with the Secretary of the Interior copies of all sales contracts for the disposition of oil and gas produced hereunder except for production purposes on the land leased, and in the event the United States shall elect to take its royalties in money instead of in oil or gas, not to sell or otherwise dispose of the products of the land leased except in accordance with a sales contract or other method first approved by the Secretary of the Interior.

(e) Monthly statements.—To furnish monthly statements in detail in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and gas produced and saved during the preceding calendar month as the basis for computing the royalty due the lessor. The leased premises and all wells, improvements, machinery, and fixtures thereon or connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized officer of the department.

(f) Plats and reports.—To furnish annually and at such times as the Secretary shall require, in the manner and form prescribed by the Secretary of the Interior, a plat showing all the development work and improvements on the leased lands, and other relating information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, investment, deprecia-

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tion, and cost of operation, together with a statement as to the amount and grade of oil and gas produced and sold, and the amount received therefor by operations hereunder.

(g) Log of wells.—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand. [48]

(h) Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby, while such products can be secured in paying quantities, unless consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectively shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been

patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related productive operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste, and preservation of the property and the health and safety of workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at the lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph: Provided, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond lessee's control. The regulations herein referred to are the "Operating Regulations to Govern the Production of Oil and Gas" under the act of Feb. 25, 1920, and General Land Office Cir. 872 in so far as applicable.

(i) Taxes and wages—Freedom of purchase.—To pay, when due, all taxes lawfully assessed and levied under the laws of the State, upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(j) Reserved deposits.—To comply with all statutory requirements and regulations thereunder,

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if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or [49] may hereafter be provided by the laws reserving such oil or gas.

(k) Assignment of lease.—Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

(l) Deliver of premises in case of forfeiture.—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration, or renewal of equipment and improvements in the ordinary course of operations.

Sec. 3. The lessor expressly reserves:

(a) Rights reserved—Easements and rights of way.—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in said act of Feb. 25, 1920 (41 Stat. 437), and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the

lands embraced within this lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(c) Pipe lines to convey at reasonable rates.—The right to require the lessee, his assignees or beneficiary, if owner or operator of, or owner of a controlling interest in, any pipe line, or any company operating the same which may be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discrimination the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of said act of Feb. 25, 1920.

(d) Monopoly and fair prices.—Full power and authority to carry out and enforce all the provisions of Section 30 of the said act of Feb. 25, 1920, which shall be deemed applicable to this lease to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(e) Helium.—The lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium the [50] lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner re-

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quired by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof: Provided, That the lessee shall not, as a result of the operation in this section provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss, otherwise, for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Sec. 4. Surrender and termination of lease.—The lessee may, on consent of the Secretary of the Interior first had and obtained in writing, surrender and terminate this lease upon payment of all rents, royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Sec. 5. Purchase of materials, etc., on termination of lease.—Upon the expiration of this lease,

or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not, within six months, elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and [51] except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells.

Sec. 6. Judicial proceedings in case of default.— If the lessee shall fail to comply with the provisions of the act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at the date hereof, and such default shall continue after service of written notice thereof by the lessor, then the lessor may in-

stitute appropriate judicial proceedings for the forfeiture and cancellation of this lease in accordance with the provisions of section 31 of said act of Feb. 25, 1920; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 7. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

Sec. 8. Unlawful interest.—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1919 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof:

THE UNITED STATES OF AMERICA,

By E. C. FINNEY,

First Assistant Secretary of the Interior.

PAN AMERICAN PETROLEUM &
TRANSPORT CO.

By JOS. J. COTTER,

Vice-President.

Witness to signature of:

GEORGE W. JOHNSON, Jr.

W. A. O'NEILL. [52]

(Name of Court and Title of Case).

THE ANSWER OF THE DEFENDANTS TO
THE AMENDED BILL OF COMPLAINT.

The above-named defendants, Pan American Petroleum Company and the Pan American Petroleum & Transport Company, appearing by their attorneys, whose names are subscribed hereto, answering the amended bill of complaint in the above-entitled action, respectfully show the Court:

1. Answering paragraph numbered 1 of the amended bill of complaint, they admit the facts therein alleged, except that they deny that the defendant Pan American Petroleum & Transport Company is now or at any time has been doing business in the State of California, whether in the Southern District thereof, or otherwise. [53]

2. Answering paragraph numbered 2 of the amended bill of complaint, they admit that Edward

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L. Doheney was, up to July 24, 1922, the President of each of the said defendant corporations. On or about July 24th, 1922, he retired as President of the Pan American Petroleum Company and became Chairman of its Board of Directors. He continued as President of the said defendant Pan American Petroleum & Transport Company up to December 7th, 1923, at which time he retired as such President, and was duly elected Chairman of the Board of Directors of the said corporation.

They deny that he is or was at the times mentioned in the amended bill of complaint, the owner and holder of a large number of shares of the capital stock of Pan American Petroleum & Transport Company.

3. Answering paragraph numbered 3 of the amended bill of complaint, they admit the allegations set forth therein.

4. Answering paragraph numbered 4 of the amended bill of complaint, they admit the allegations set forth therein.

5. Answering paragraph numbered 5 of the amended bill of complaint, they admit the allegations set forth therein, except that they are without knowledge that all of the lands described in the said paragraph contain petroleum in large quantities, and, therefore, if material, they call for strict proof of this allegation.

6. Answering paragraph numbered 6 of the amended bill of complaint, they deny each and every allegation set forth therein. [54]

7. Answering paragraph numbered 7 of the

amended bill of complaint, they admit the allegations of fact set forth therein, but are advised that they are not required to admit or deny the conclusions of law in said paragraph pleaded, and, therefore, neither admit nor deny the same.

8. Answering paragraph numbered 8 of the amended bill of complaint, they admit the allegations set forth therein.

9. Answering paragraph numbered 9 of the amended bill of complaint, they admit that an Executive Order, bearing date May 31, 1921, a true copy whereof is annexed to said amended bill of complaint and is marked Exhibit "A" was, in good faith, executed by the President of the United States; they are advised by counsel, and therefore aver, that the allegation of said paragraph that said Order was without legal authority and of no force and virtue, is a conclusion of law which they are not called upon to admit or deny; they deny that the said Order was known to be without legal authority by these defendants, or either of them, or by the said Doheny; they are without knowledge concerning each and every other allegation set forth in said paragraph number 9, and, therefore, deny the same.

10. Answering paragraph numbered 10 of the amended bill of complaint, they deny each and every allegation set forth therein.

11. Answering paragraph numbered 11 of the amended bill of complaint, they deny each and every allegation set forth therein.

12. Answering paragraph numbered 12 of the

amended bill of complaint, they deny each and every allegation set forth therein. [55]

13. Answering paragraph numbered 13 of the amended bill of complaint, they deny each and every allegation set forth therein.

14. Answering paragraph numbered 14 of the amended bill of complaint, they admit that on or about March 7th, 1922, the above-named plaintiff, in writing, invited proposals for the exchange of royalty crude oil accruing to the plaintiff from leases in Naval Petroleum Reserve No. 1 or No. 2 in the State of California, or both, for fuel oil and storage facilities to be furnished and provided by the bidder at Pearl Harbor, T. H.

They further admit that the said invitation provided that bids should be made in barrels of crude oil for the furnishing, erecting and completing of certain structures and storage facilities, and the filling of said structures with fuel oil.

They further admit that said invitation for proposals contained the clauses quoted in said paragraph numbered 14 of the said amended bill of complaint.

Except as specifically above admitted, they deny each and every other allegation set forth in the said paragraph numbered 14.

15. Answering paragraph numbered 15 of the amended bill of complaint, they admit the allegations set forth therein, except insofar as said allegations purport to construe the Proposal "B" therein referred to, and they refer to the terms of the said proposal itself, which constitutes a part of Exhibit

"B," which is annexed to and made a part of said amended bill.

16. Answering paragraph numbered 16 of the amended bill of complaint, they admit that on or about the 25th [56] day of April, 1922, a contract was entered into between the plaintiff and the defendant, Pan American Petroleum & Transport Company, and that a substantially true copy of the said agreement is annexed to and made a part of said amended bill of complaint, and is marked Exhibit "B." These defendants reserve the right, however, to correct any errors which may at any time be found in the said copy.

Except as thus specifically admitted, they deny each and every other allegation set forth in said paragraph numbered 16.

17. Answering paragraph numbered 17 of the amended bill of complaint, they deny each and every allegation set forth therein.

18. Answering paragraph numbered 18 of the amended bill of complaint, they admit that on April 25th, 1922, a certain letter, signed by E. C. Finney, Assistant Secretary of the Interior of the United States, and by Edwin Denby, Secretary of the Navy of the United States, was delivered to the defendant Pan American Petroleum & Transport Company, and that a true copy thereof is annexed to the said amended bill of complaint and marked Exhibit "E." They state that they have no knowledge as to whether the execution and delivery of the said letter took place with the knowledge and by the

direction of Albert B. Fall in said paragraph mentioned.

Except as hereinbefore stated, they deny each and every other allegation set forth in said paragraph numbered 18.

19. Answering paragraph numbered 19 of the amended bill of complaint, they deny each and every allegation set forth therein. [57]

20. Answering paragraph numbered 20 of the amended bill of complaint, they admit that on June 5th, 1922, a lease was executed by the plaintiff to the defendant Pan American Petroleum & Transport Company, and that a substantially true copy thereof is annexed to and made a part of said amended bill of complaint and marked Exhibit "F." These defendants reserve the right, however, to correct any errors that may at any time be found in the said copy.

Except as hereinbefore specifically stated, they deny each and every other allegation set forth in said paragraph numbered 20.

21. Answering paragraph numbered 21 of the amended bill of complaint, they deny each and every allegation set forth therein.

22. Answering paragraph numbered 22 of the amended bill of complaint, they admit that on December 11, 1922, a further contract was entered into between the plaintiff and the defendant Pan American Petroleum & Transport Company, and that on the same day a lease was executed between the plaintiff and the defendant Pan American Petroleum Company, of which said contract

and lease substantially correct copies are annexed to the said bill of complaint and marked Exhibit "C" and Exhibit "D," respectively. These defendants reserve the right, however, to correct any errors which may at any time be found in the said copies.

Except as above admitted, they deny each and every allegation set forth in paragraph numbered 22.

23. Answering paragraph numbered 23 of the amended bill of complaint, they admit the allegations of fact set forth therein. [58]

24. Answering paragraph numbered 24 of the amended bill of complaint, they deny each and every allegation set forth therein.

25. Answering paragraph numbered 25 of the amended bill of complaint, they deny each and every allegation set forth therein.

26. Answering paragraph numbered 26 of the amended bill of complaint, they deny each and every allegation set forth therein.

27. Answering paragraph numbered 27 of the amended bill of complaint, they admit that the defendant Pan American Petroleum & Transport Company has received, pursuant to the said agreements of April 25 and December 11, 1922, and in virtue of its legal right thereto under the terms of said agreement, certain of the royalty oil accruing to the plaintiff under leases upon Naval Petroleum Reserves No. 1 and No. 2 in the State of California, including the royalty oil accruing under the said leases dated December 11, 1922, and June 5th, 1922;

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but they deny that said defendant has received all royalty oil due the plaintiff under all such leases; and further deny each and every other allegation set forth in said paragraph numbered 27.

28. Answering paragraph numbered 28 of the amended bill of complaint, they admit that the defendant Pan American Petroleum Company, pursuant to the terms of the said leases of December 11, 1922, and June 5th, 1922, has extracted, taken and received crude oil and gas in Naval Petroleum Reserve No. 1, and has drilled wells and extracted therefrom oil and gas. [59]

They deny each and every other allegation set forth in said paragraph numbered 28.

29. Answering paragraph numbered 29 of the amended bill of complaint, they deny each and every allegation set forth therein.

30. Answering paragraph numbered 30 of the amended bill of complaint, they deny each and every allegation set forth therein.

31. Answering paragraph numbered 31 of the amended bill of complaint, they deny each and every allegation set forth therein.

32. Answering paragraph numbered 32 of the amended bill of complaint, they deny each and every allegation set forth therein.

33. Further answering said amended bill of complaint, these defendants, hereby reiterating each and every averment and denial hereinbefore contained, further respectfully show the Court that the said defendant Pan American Petroleum & Transport Company had, prior to the commence-

ment of this action, duly and fully completed, in accordance with the terms of the said contract of April 25th, 1922, being Exhibit "B" annexed to the amended bill of complaint herein, and with the terms of the specifications which were annexed to the original of said contract, the construction, upon property owned by the plaintiff at Pearl Harbor, T. H., of all storage facilities, and other things required by the said contract and specifications to be constructed, and had duly and fully performed each and every other [60] obligation upon it imposed by the said contract; and that the said defendant had, prior to the commencement of this action, duly furnished to plaintiff and delivered into the storage facilities thus and there constructed, the quantity of 1,453,275 barrels of fuel oil of the quality specified in said contract and specifications.

All of the said storage facilities constructed, things done and fuel oil delivered, were duly constructed, done and delivered at the special instance and request of the plaintiff. That the same were duly approved and certified to have been constructed, done and delivered in accordance with the terms of the said contract and specifications, by the plaintiff's duly authorized official representative in charge of operations at Pearl Harbor, T. H., and have been duly and formally delivered to, and accepted and approved by the above-named plaintiff, which became and is vested with title thereto.

34. That all of the storage facilities constructed and delivered to the plaintiff as aforesaid, pursuant to the said contract of April 25th, 1922, were thus

constructed and furnished by the expenditure of moneys advanced by the said defendant Pan American Petroleum and Transport Company, and at the actual cost thereof, and without any profit whatsoever to either of defendants herein, and that all of the said fuel oil delivered to the plaintiff was thus delivered at the cost price thereof actually paid by the said defendant, and without any profit to the said defendant, plus the reasonable cost of transportation to Pearl Harbor, T. H.; and that all of the said storage facilities and fuel oil were thus furnished to the plaintiff at the reasonable market price and cost thereof, all of which was actually paid by the said defendant, or was [61] firmly obligated to be paid by the said defendant. That the said price and cost represents and represented the actual and reasonable value thereof to the plaintiff, and that the plaintiff has, by reason of the foregoing facts, been benefited and enriched by the said defendant in the said sum. That the said sum amounts to approximately \$5,472,000 subject to such changes as may be involved in the adjustment of certain outstanding claims.

That the said defendant Pan American Petroleum & Transport Company had received from the plaintiff prior to the commencement of this action, pursuant to the terms of the said contract, royalty petroleum products delivered to it by the plaintiff of the value of \$3,856,400, and no more; but that no part of the balance of money advanced and expended, and obligated to be so advanced and expended by the said defendant, in performing said

contract, for the benefit and advantage of the plaintiff, has been paid to the said defendant by the plaintiff, and that the full balance thus expended or obligated to be expended was, at the time of the commencement of this action, due and owing to the said defendant by the said plaintiff, and is payable in the manner specified by said contract, Exhibit "B" annexed to said bill of complaint. That the amount of the said balance is approximately \$1,616,200, less any credits to which plaintiff may have become entitled since the commencement of this action and subject to such changes as may be involved in the adjustment of certain outstanding claims.

35. These defendants further show the Court that said defendant Pan American Petroleum & Transport Company had, prior to the commencement of this action, duly completed, in accordance with the terms of the said contract of December 11th, 1922, being Exhibit "C" annexed to the bill of complaint herein, and with the terms of the [62] specifications which were annexed to the original of said contract, the construction, upon property owned by the plaintiff at Pearl Harbor, T. H., of over seventy per cent of all storage facilities and other things required by the said contract and specifications to be constructed, in addition to the storage facilities and other things required by the said contract of April 25th, 1922, hereinbefore referred to. That all of the foregoing matters and things had been constructed, furnished and done at the special instance and request of

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the plaintiff. That the same were duly approved and certified to have been constructed and done in accordance with the terms of the said contract and specifications, by the plaintiff's duly authorized official representative in charge of operations at Pearl Harbor, T. H., and have been duly and properly delivered to, and accepted and approved by the above-named plaintiff, which became and is vested with the title thereto.

That all of the said storage facilities constructed and delivered to the plaintiff as aforesaid, pursuant to the said contract of December 11th, 1922, were thus constructed and furnished by the expenditure of moneys advanced by the said defendant Pan American Petroleum & Transport Company, and at the actual cost thereof, and without any profit whatsoever to either of the defendants herein, and that all of the said storage facilities were thus furnished to the plaintiff at the reasonable market price and cost thereof, all of which was actually paid by the said defendant or was firmly obligated to be paid by the said defendant; that the said sum represents and represented the actual and reasonable value thereof to the plaintiff, and that the plaintiff has, by reason of the foregoing facts, been benefited and enriched by the said defendant [63] in the said sum. That the said sum expended and obligated to be expended is approximately \$3,800,000.

That no part of the said sum thus advanced by the said defendant to the plaintiff, and for its benefit, has been paid to the said defendant by the said

plaintiff, and said defendant is entitled to and hereby claims the full amount thereof.

That the said defendant Pan American Petroleum & Transport Company was, at the time of the commencement of this action, and still is, duly continuing the performance of all of the obligations upon it imposed by the said contract of December 11, 1922, and the specifications thereunto annexed, subject to the conditions thereof, and that the said defendant has been, and is ready and willing to continue and complete performance of each and every of the said obligations as provided in the said contract, and to advance and provide all moneys necessary therefor.

That all work done and materials furnished have been and will be done and furnished without any profit whatsoever to either of these defendants, and at the reasonable cost price thereof, and that the said reasonable cost price thereof represents and will represent the actual and reasonable value thereof to the plaintiff, and that the said plaintiff will, by reason of the foregoing facts, be benefited and enriched by the said defendant to the extent of all sums expended as aforesaid not only prior to but subsequent to the commencement of this action.

36. That prior to the commencement of this action these defendants, pursuant to the obligations of the said contracts of April 25th, 1922, and December 11th, 1922, and pursuant to the leases of December 11th, 1922, and [64] June 5th, 1922 (being Exhibits "D" and "F" annexed to the

amended bill of complaint herein, and which are hereby made a part hereof as fully as if again set forth at length), had advanced and expended upon the properties covered by the said leases, large amounts of money, in the exploration and development of, and in the making of permanent and useful improvements upon the said properties belonging to the plaintiff, such improvements consisting of the drilling and equipment of oil wells, the furnishing and erection of edifices, structures, pipe-lines, tanks, compressor and absorption plant, and other equipment and appurtenances, and in the creation and operation of other facilities of the general nature provided in Section 1 of each of the said leases which were necessary in order to produce and handle petroleum from the said lands, pursuant to the terms of the said leases and contracts. That all of the said sums of money were advanced by these defendants in good faith and under advice of counsel, under the supervision of plaintiff's representatives and for the purpose of complying with the obligations and duties assumed by the said defendants, and in the belief that the said contracts and the said leases are, in all respects, valid, legal and enforceable instruments as between the plaintiff and the said defendants, respectively.

That all moneys advanced by the said defendants for the purposes aforesaid represented the actual and reasonable cost thereof, and that all of the said wells, edifices, structures, equipment and other appurtenances were thus erected and constructed upon plaintiff's properties covered by the said lease, and

were and are of the reasonable and fair value of all sums expended therefor, and were [65] worth the said sums to the said plaintiff, and that the plaintiff has, by reason of the foregoing facts, been benefited and enriched by the said defendants in the full amount of all of the said sums thus expended, with all of which these defendants are entitled to be reimbursed by the plaintiff.

37. That in addition to the foregoing disbursements and expenditures, said defendants have also, prior to the commencement of this action, expended, or became firmly obligated to expend, approximately Ten Million Dollars (\$10,000,000) in the construction of refinery facilities, together with pipe-lines, storage, docking and other facilities, in the vicinity of Los Angeles, California, all of which were necessary, and known by the plaintiff to be necessary to be provided in order to enable the said defendants to perform the obligations imposed by the contract of December 11th, 1922, Exhibit "C" annexed to the amended bill of complaint, and by the lease of the same date, Exhibit "D," similarly annexed, and that all of the said expenditures were made with the knowledge and approval of, and at the special instance and request of the said plaintiff. That if for any reason the contract of December 11th, 1922, and the leases of June 5th and December 11th, 1922, should be cancelled and annulled, all of the said facilities would be thereby greatly depreciated in value, and a large loss, the exact amount of which cannot now be estimated, would be caused thereby to the said defendants, for

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all of which the said defendants would have no adequate, efficient or complete remedy at law, and that the said defendants are entitled to be reimbursed by the plaintiff with the amount of all such losses.
[66]

38. That by reason of all of the matters hereinbefore in this counterclaim and defense set forth, the plaintiff is, in justice and in equity, bound to reimburse to these defendants, in the manner and form provided in the said contracts and leases hereinbefore referred to or otherwise, all amounts advanced by these defendants or either of them, whether prior to the commencement of this action or subsequent thereto, together with all losses sustained or which may be sustained as hereinbefore stated, less any lawful credits to which the above-named plaintiff has been or may hereafter become entitled pursuant to the said contracts and leases, or otherwise.

39. That the above-named plaintiff has threatened to and is endeavoring to prevent these defendants from continuing to operate under and enjoy the benefits of the said contracts of April 25th and December 11th, 1922, and said leases of December 11th, 1922, and June 5, 1922, and to thus prevent these defendants from obtaining reimbursement, pursuant to the terms of the said contracts and lease, for all moneys advanced, as aforesaid, without the plaintiff having made, or offered to make or tender any provision for such reimbursement,—for all of which these defendants, unless protected by your Honorable Court, will have no

complete, adequate, practical and efficient remedy at law; and these defendants, again reiterating that the plaintiff has no cause of action whatsoever against these defendants or either of them, nevertheless, respectively submit to your Honorable Court that full payment of all sums advanced by the said defendants, and of any other sums which these defendants may hereafter advance in connection with the performance of the said contracts, or either of them, or with the operation under [67] the said leases, together with all losses sustained or which may be sustained as hereinbefore stated, should, in any event, be required to be made or provided for by the plaintiff to the said defendants as a condition precedent to the granting of any relief whatsoever to which the plaintiff may show itself to be entitled herein.

40. Further answering said amended bill of complaint, and in lieu of demurrer thereto, the defendants and each of them respectively say that the said bill is bad in substance for the reason that the facts set forth therein are insufficient to constitute a valid cause of action in equity against the said defendants, or either of them; that the plaintiff, prior to the filing of its original or its said amended bill, did not pay or tender to the defendants, or either of them, the amount to which they and each of them were and are justly and equitably entitled to receive by reason of the matters and things herein set forth; that the plaintiff did not, in and by its original or its said amended bill herein, tender to the defendants, or either of them, the

said amounts, or any part thereof; that the plaintiff has not, by its original or its said amended bill herein, offered to do equity in the premises; and that the said amended bill is without equity.

WHEREFORE, the above named defendants pray:

1. That the said amended bill of complaint be, in all respects, dismissed, with costs of this action, and that an order be made vacating any and all injunctions or other orders which the plaintiff may have obtained herein, and vacating any and all orders appointing receivers which may have been made, and that the receivers appointed herein be discharged and directed to account for and turn [68] over and pay to these defendants all sums of money which may have come into their hands in the discharge of their duties.

2. That if the above prayer be not granted, then that no relief be accorded to the plaintiff against these defendants, or either of them, except upon condition that the said plaintiff shall permit these defendants to continue to operate under and enjoy such benefits and privileges as may have been created by the said contracts of April 25, 1922, and December 11, 1922, and by the leases of December 11, 1922, and June 5, 1922, until they, and each of them, shall have been reimbursed all amounts which may be due to them, and each of them, by reason of each and every matter and thing hereinbefore set forth, whether occurring prior or subsequent to the commencement of this action; or until plaintiff shall have otherwise fully reimbursed

these defendants, and each of them, in respect of each and every the said matters and things, and shall have done all things required by equity and good conscience; and that the amount of the balance to which these defendants are thus entitled, be ascertained by the taking and stating of an account before a Master, pursuant to the customary practice of this Court.

3. That the said defendants, and each of them, have such other and further relief as may be just and equitable.

FREDERIC R. KELLOGG,
FRANK J. HOGAN,
CHARLES WELLBORN,
OLIN WELLBORN,
DEAN EMERY,
JOSEPH J. COTTER and
HAROLD WALKER,

Solicitors for the Above-named Defendants.

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(Name of Court and Title of Case.)

**CERTIFICATE OF NAMES AND ADDRESSES
OF ALL WITNESSES SERVED WITH
SUBPOENAS ISSUED UPON ORDERS
OF PLAINTIFF AND DEFENDANTS,
SHOWING DATE OF SERVICE IN EACH
INSTANCE IN THE ABOVE-ENTITLED
CAUSE.**

I, Charles N. Williams, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that accord-

ing to the records in my office subpoenas were issued and served, by order of the parties in this cause, to the following persons, at the addresses and upon the dates hereinafter set forth, to appear as witnesses upon the trial of this cause:

WITNESSES SUBPOENAED ON BEHALF OF PLAINTIFF AND BY ORDER OF
PLAINTIFF'S SOLICITORS.

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Ambrose, A. W.	Empire Gas & Fuel Co., Bar- tlesville, Okla.	Aug. 9, 1924	Sep. 25, 1924
Bain, H. Foster	Director of the Bureau of Mines, Department of Interior, Washington, D. C.	Aug. 9, 1924	Aug. 18, 1924
Benton, J. E.	Vice-President, First National Bank of El Paso, Texas.	Oct. 7, 1924	Oct. 10, 1924
Black, Charles N.	C/o Ford, Bacon & Davis, 58 Sutter St., San Francisco, Cal.	Sep. 2, 1924	Sep. 10, 1924
Bradner, B. J.	911 Wright Callender Build- ing, Los Angeles, California.	Sep. 2, 1924	Sep. 16, 1924
Brownfield, A. D.	Carrizozo or White Mountain, New Mexico.	Oct. 14, 1924	Oct. 15, 1924

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Denby, Hon. Edwin	Former Secretary of the Navy, Detroit, Michigan.	Aug. 9, 1924	Aug. 18, 1924
Dyer, B. T.	1105 Bank of Italy Building, 649 S. Olive St., Los Angeles, California. [70]	Sep. 2, 1924	Sep. 3, 1924
Ewart, Matthew H.	Care of Blair & Co., 24 Broad Street, New York.	Sep. 27, 1924	Oct. 3, 1924
Finney, E. C.	Assistant Secretary of the In- terior, Interior Department, Washington, D. C.	Aug. 9, 1924	Aug. 18, 1924
Flory, George D.	Vice-President, State National Bank, El Paso, Texas.	Oct. 7, 1924	Oct. 10, 1924
Folsom, D. M.	C/o General Petroleum Cor- poration, Alaska-Commercial Building, San Francisco, Cali- fornia.	Sep. 2, 1924	Sep. 10, 1924

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Gregory, Admiral L. E.	Navy Department, Washington, D. C.	Aug. 11, 1924	Aug. 18, 1924
Harris, Will Ed.	Albuquerque or White Mountain, New Mexico.	Oct. 14, 1924	Oct. 16, 1924
Herrin, W. F.	Southern Pacific Building, 65 Market Street, San Francisco, California.	Sep. 2, 1924	Sep. 19, 1924
Hill, Ernest K.	C/o Hon. Irvine L. Lenroot, Senate Office Bldg., Washington, D. C.	Oct. 7, 1924	Oct. 13, 1924
Johnson, J. T.	Three Rivers, New Mexico.	Oct. 14, 1924	Oct. 15, 1924
Kent, W. A.	C/o Bureau of Mines, Department of the Interior, Washington, D. C.	Oct. 7, 1924	Oct. 13, 1924
Lacy, Wm.	President, Lacy Manufacturing Co., Washington Building, Los Angeles, California.	Nov. 11, 1924	Nov. 12, 1924

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Little, Charles	Care of Blair & Co., 24 Broad Street, New York.	Sep. 27, 1924	Oct. 3, 1924
Mack, Theodore	Department of the Interior, 18th and F St., Washington, D. C.	Oct. 7, 1924	Oct. 13, 1924
McInnis, W. J.	Receiver, Citizens National Bank, Roswell, New Mexico.	Oct. 14, 1924	Oct. 16, 1924
McLaughlin, A. C.	79 New Montgomery St., San Francisco, California.	Sep. 2, 1924	Sep. 10, 1924
Robinson, Admiral John K.	Navy Department, Washington, D. C.	Aug. 9, 1924	Aug. 18, 1924
St. Clair, L. T.	Union Oil Building, 617 West 7th St., Los Angeles, Cali- fornia.	Sep. 2, 1924	Sep. 3, 1924
Storey, H. M.	Standard Oil Company Build- ing.	Sep. 2, 1924	Sep. 10, 1924

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Sutro, Oscar	ing, 225 Bush St., San Francisco, Calif.	2, 1924 Sep.	26, 1924 Sep.
Weill, A. L.	Attorney at Law, San Francisco, California.	2, 1924 Sep.	10, 1924 Sep.
Young, Graham	Care of Blair & Co., 24 Broad Street, New York.	27, 1924 Sep.	3, 1924 Oct.

WITNESSES SUBPOENAED ON BEHALF OF DEFENDANTS AND BY ORDER
OF DEFENDANTS' SOLICITORS.

Name of Witness.	Address of Witness.	Date Subpoena Issued.	Date Subpoena Served.
Wilbur, Hon. Curtis D.	Secretary of the Navy, Washington, D. C.	9, 1924 Oct.	14, 1924 Oct.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this — day of July, in the year of our Lord one thousand nine hundred and twenty-five, and of our Independence the one hundred and fiftieth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California, Northern Division.

By B. B. Hansen,
Deputy Clerk. [72]

(Name of Court and Title of Case.)

**NOTICE OF THE LODGING IN THE CLERK'S
OFFICE BY DEFENDANTS-APPEL-
LANTS OF STATEMENT OF THE EVI-
DENCE.**

To Atlee Pernerene and Owen J. Roberts, Esquires, Special Counsel for the United States; and S. W. McNabb, Esquire, United States Attorney, Southern District of California, Solicitors for the United States of America, Plaintiff-Appellee, in the Above-Entitled Cause:

Take notice that there has on this 15th day of July, A. D. 1925, been lodged in the office of the Clerk of the United States District Court for the Southern District of California statement of the

evidence in this cause, prepared complaint to Rule 75 (b) of the Equity Rules prescribed by the Supreme Court of the United States, and that on the 27th day of July, 1925, in the said District Court at the City of Los Angeles, State of California, the said statement of the evidence will be presented to the Honorable Paul J. McCormick, Judge of said Court, at which time and place the undersigned will ask the said Judge to approve the said statement.

Dated at Los Angeles, California, July 15, 1925.

CHARLES WELLBORN,

OLIN WELLBORN, Jr.,

C. W.

JOS. J. COTTER,

HAROLD WALKER,

DEAN EMERY,

HENRY W. O'MELVENY,

WALTER K. TULLER,

FREDERIC R. KELLOGG,

FRANK J. HOGAN,

Solicitors for Pan American Petroleum Company
and Pan American Petroleum & Transport
Company, Defendants-Appellants. [73]

ACKNOWLEDGMENT AND WAIVER.

The solicitors for the United States in the above-entitled cause hereby acknowledge service of the foregoing notice and, having been furnished by solicitors for defendants with copies of said statement of the evidence prior to the time of the lodg-

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ment thereof in the Clerk's office, and having examined said statement and found the same to be true and complete, the ten days' notice of the time and place when the defendants will ask the United States District Judge to approve said statement, given in the foregoing, is hereby waived, and the plaintiff hereby consents to the approval of said statement of the evidence forthwith.

Dated at Los Angeles, California, this 15th day of July, 1925.

ATLEE POMERENE,
OWEN J. ROBERTS,
S. W. McNAB,

Solicitors for the Plaintiff-Appellee, United States
of America. [74]

(Name of Court and Title of Case.)

STATEMENT OF TESTIMONY UNDER FED-
ERAL EQUITY RULE 75 (b).

The following is defendants-appellants' condensed statement in narrative form of the testimony introduced upon the trial of the above-entitled suit, made in pursuance of Equity Rule 75 (b) and lodged in the Clerk's office for the examination of plaintiff as provided by said rule:

It was stipulated that all of the shares of the capital stock of the defendant Pan American Petroleum Company at the time of the occurrences referred to in the plaintiff's bill of complaint and

defendants' answers were owned by the defendant Pan American Petroleum & Transport Company, and that the said shares of stock at the time of the trial of this suit were still thus owned; that the capital stock of the defendant Pan American Petroleum & Transport Company is divided into two classes known as Class A and Class B of which Class A is the voting stock, the two classes being identical in all other respects; the total stock of this defendant issued and outstanding amounts to 2,726,630 shares, of which 1,100,556 shares are Class A and 1,626,074 are Class B; there are a total of 11,850 separate shareholders owning these two classes of stock, among them being E. L. Doheny, who is the owner of 2417 shares of A stock; Carrie Estelle Doheny, wife of E. L. Doheny, who is the owner of 837 shares of A stock and 50 shares of B stock; E. L. Doheny, Jr., who is the owner of 708 shares of A stock and 3706 shares of B stock; Lucy Smith Doheny, wife of E. L. Doheny, Jr., who is the owner of 77 shares of A stock and 49 shares of B stock; and the Petroleum Securities Company, a corporation incorporated under the laws of the State of California in the year 1908, which is the owner of [75—1] 525,438 shares of A stock. It was further stipulated that of the total outstanding stock of the said Petroleum Securities Company (with the exception of a few qualifying shares) one-third is owned by E. L. Doheny, Sr., one-third by Carrie Estelle Doheny and one-sixth each by E. L. Doheny, Jr., and Lucy Smith Doheny.

Plaintiff called to the attention of the Court for judicial notice the following documents: Executive Order issued September 2, 1912, by William H. Taft, President of the United States, by the provisions of which it was declared that public lands situate in the County of Kern, State of California, described in paragraph 5 of the Amended Bill of Complaint shall hereafter constitute Naval Petroleum Reserve No. 1 and shall be held for the exclusive use or benefit of the United States Navy. Executive Order issued December 13, 1912, by William H. Taft, President of the United States, constituting certain lands therein described as Naval Reserve No. 2 for the exclusive use or benefit of the United States Navy. Copies of these two Executive Orders were marked Plaintiff's Exhibit Nos. 1 and 2, respectively. Executive Order issued by Warren G. Harding, President of the United States, dated May 31, 1921, a true copy of which is annexed to the Amended Bill of Complaint as Exhibit "A," the same being marked Plaintiff's Exhibit 3.

Testimony of H. A. Stuart, for Plaintiff.

H. A. STUART, Commander, U. S. Navy, inspector of naval petroleum and oil shale reserves, Caspar, Wyoming, a witness called by plaintiff, identified letter dated April 30, 1920, signed Josephus Daniels, and the same was offered in evidence as Plaintiff's Exhibit No. 4. Defendants objected to the receipt of said letter in evidence on the ground that it is not

(Testimony of H. A. Stuart.)

in any way connected with the defendants, has no reference to the issues presented by the pleadings in the case, is incompetent, irrelevant and immaterial, but the Court overruled the objection and admitted said letter in evidence to which action and ruling of the Court an exception was duly reserved by defendants. Subsequently at the close of all of the testimony defendants ruled to strike said letter from the records of the evidence in the case on the grounds stated to the Court in support of the objection to its submission, but said motion to strike was overruled and an exception duly noted. Plaintiff's Exhibit No. 4 is a memorandum, dated April 30, 1920, from the Secretary of the Navy to Chief of Naval Operations; General Board; Bureau of Navigation; Bureau of Yards and Docks; Bureau of Construction and Repair; Bureau of Steam Engineering; and Bureau of Supplies and [76—2] Accounts, on the subject of "Establishment of Oil Fuel Office under Secretary's Office. Detail of Commander H. A. Stuart, U. S. N.," and in the body thereof, over the signature of Josephus Daniels, Secretary of the Navy, it is stated, in substance, that Commander H. A. Stuart has been detailed for special duty under the Secretary of the Navy in connection with oil fuel matters; that this office has been established for the purpose of compiling data relative to the fuel oil and gasoline situation within the United States and in foreign countries, and for furnishing a clearing house for the various activities and policies

(Testimony of H. A. Stuart.)

of the Navy Department; that all papers affecting policy relative to oil fuel and its use, storage facilities, floating equipment for handling oil, etc., shall be sent to this office; that the oil situation is certain to involve intra-departmental matters within a short time, and may involve international questions, and it is therefore necessary that the Navy's requirements, facilities, and policies should be outlined and coordinated without delay if they are to carry proper weight; if Congress should pass pending legislation it is proposed to employ technical experts in this office and, if so, their services will be available to the various bureaus. The witness retained the said office until October 1921 and there was, subject to the same objection, ruling, and exception as above noted with regard to Plaintiff's Exhibit No. 4, offered and received in evidence as Plaintiff's Exhibit No. 5 paper dated October 18, 1921, from the Secretary of the Navy to the same addressees as those named in Exhibit No. 4 on the subject of "Fuel Oil Office under the Secretary's office" which, after referring to said Exhibit 4, ordered that the Fuel Oil Office established thereby "is hereby transferred to the Bureau of Engineering, which will have charge of all the activities performed under this office." Said exhibit is signed Edwin Denby. Witness next identified and there was offered and received in evidence as Plaintiff's Exhibit No. 6 communication dated April 14, 1921, signed Edwin Denby, Secretary of the Navy, directing Lieut-Comdr. I. F. Landis, U. S. Navy,

(Testimony of H. A. Stuart.)

San Francisco, California, to publish in at least two San Francisco papers invitations for sealed proposals to be opened April 25, 1921, in San Francisco and Washington, D. C., for a lease on a strip of land within Naval Petroleum Reserve No. 1 along the north side of Section 1-31-24 M. D. M., and along the east side of the northeast quarter of said section 900 feet wide and to have drilled thereon twenty-two wells in two rows as rapidly as men, material and supplies therefor [77-3] could be obtained. Said document contained directions as to the conditions and terms under which bids were to be submitted and considered.

Witness testified that, in his presence, bids received in response to said invitation were opened in the office of Judge Finney (Assistant Secretary of the Interior) and that among the bids submitted in response to the foregoing invitation were two from defendant Pan American Petroleum Company, which were offered and received in evidence as Plaintiff's Exhibits 7 and 8, and in substance are as follows:

Plaintiff's Exhibit No. 7 is dated Washington, D. C., April 25, 1921, addressed to the Secretary of the Navy, and advises that Pan American Petroleum Company proposes to lease, in accordance with the terms of the call for bids, the land therein described and to pay a royalty of 55½ per cent of the oil produced from said lease, to be delivered in crude oil on the lease, or, at the option of the Secretary of the Navy, the equivalent in fuel oil

(Testimony of H. A. Stuart.)

delivered at tidewater; bidder agrees to commence within two days after execution of lease and to complete the twenty-two wells within eight months; bond is submitted with bids.

Plaintiff's Exhibit No. 8 is dated April 25, 1921, addressed to the Secretary of the Navy, and, referring to Exhibit No. 7, states, in substance, that in connection therewith, if the lease bid for is awarded Pan American Company, it will be willing to complete the twenty-two wells in six months, provided the royalty be fixed at 50 per cent, in eight months as stated in the bid, in twelve months if the royalty be fixed at $57\frac{1}{2}$ per cent; basis of exchanging royalty oil for fuel oil delivered by the company at various ports named is stated.

Witness, continuing, testified that after it had been decided to award the above referred to lease to Pan American Company, Admiral Griffin and he called on Secretary Fall and told him that they had heard that the United Midway Oil Company was to be given a lease to part of Section 1 just south of the 900-foot strip and they objected to this because they did not think it necessary to have that drilled at the time, they considered two rows of offset wells then sufficient. Mr. Fall said that he had already taken that matter up with the President and the President had approved giving to the United Midway Oil Company lease as referred to and that in order to change this it would be necessary [78—4] to go to the President and have his decision revoked. Stuart and Griffin had heard

(Testimony of H. A. Stuart.)

that the President had approved such a lease to the United Midway Oil Company and so informed Secretary Fall who said he would send out and get the approval of the President and he did so but the paper could not at the time be found; the naval officers told the Secretary that they took his word for it, that they had heard that the President had approved it; shortly thereafter Secretary Fall sent word that he wished to see Stuart and Griffin and when they returned to his office he showed them some approval which they did not read carefully; shortly after that time the lease was divided and the Pan American was given fourteen wells and the United Midway eight wells at the same royalty, namely 55½ per cent.

When the witness' office, in charge of the Fuel Oil Office, was abolished he reported to the Bureau of Engineering, the chief of which at that time was Admiral J. K. Robison. Witness stated that he received from Admiral Robison verbal orders with regard to his activity in connection with the Interior Department and was asked by counsel for the plaintiff to state them. This question defendants by their counsel objected to on the ground that the question called for hearsay evidence and was unaccompanied by any offer to show any connection between the defendants and the orders referred to or any knowledge of the defendants thereof. This objection was overruled by the Court, to which ruling an exception was duly noted and allowed. Wit-

(Testimony of H. A. Stuart.)

ness thereupon over said objection and subject to said exception testified that Admiral Robison ordered him to have no communication whatever with the Interior Department and not to enter the Interior Department Building officially. After October 18, 1921, witness remained attached to the Bureau of Engineering in Washington until April 5, 1922, on which date he was detached and left Washington April 10, 1922. Between October 18, 1921, and April 10, 1922, there was no matter taken up with him so far as contracts in connection with the naval oil reserve were concerned; he was consulted from time to time in connection with building storage tanks at Pearl Harbor, the first million and a half barrels, and was requested to take up with the General Board the question of a relocation of the tanks there; formerly the tanks had been constructed of concrete, and under this scheme they wished to build steel tanks and that involved rearrangement of them. As to whether it was communicated to him that those tanks were to be paid for with [79—5] royalty oil, witness does not think anything had been decided definitely at that time, there may have been some talk in regard to the question. He knows nothing whatever about the execution of the contract of April 25, 1922, or any negotiations leading up to it.

(Testimony of H. A. Stuart.)

Cross-examination.

On cross-examination Commander Stuart testified that the General Board, to which he referred in his direct, consists of a number of Rear-Admirals, who are what might be called the elder statesmen of the Navy, officers near the retiring age, and who constitute the Board which goes over the general plans of the Navy, being the high court on all questions of plans and operations under which the Navy acts, and an advisory board to the Secretary of the Navy, composed of experienced naval experts who tell the civilian Navy Secretary concerning naval matters he ought to be informed on. It was this General Board to which, subsequent to October 18, 1921, and prior to his detachment April 5, 1922, in one particular and at only one time witness presented the matter relating to the relocation of tanks at Pearl Harbor. The Bureau of Engineering wanted steel tanks instead of concrete tanks. Prior to April 5, 1922, witness knew that there was on foot the Pearl Harbor project for the first million and one-half barrels, there was some talk about that, and he knew that early in 1922 the Interior Department was making preliminary investigation in order to inform prospective bidders what was required. January 14, 1922, a memorandum signed by witness was addressed to Admiral Robison; it was offered and received in evidence as Defendants' Exhibit "A" and reads as follows:

DEFENDANTS' EXHIBIT "A."

"14 January, 1922.

MEMORANDUM FOR ADMIRAL ROBISON:

The Assistant Secretary of the Interior, Judge E. C. Finney, called me up this afternoon about 3:30 and stated he had received the following telegram from Mr. Bain, Director of the Bureau of Mines, who is in California looking out for the details of making a contract for constructing the fuel oil storage for the Navy at Pearl Harbor:

'Can you wire me any results from cable information requested by Navy relative to character of material and whether disposed at sea or on land. It will facilitate matters.'

I took the matter up with the Bureau of Yards and Docks obtaining the information as follows:

'Character of material, soft mud and coral generally. Close to piers there may be some hard coral which may require blasting before hydraulic dredge will handle. Hydraulic dredging contemplated for this work. Disposition of dredged material to be on shore through pipe line.' [80—6]

This information was furnished Judge Finney on the morning of 16 January, 1922.

X/S/ H. A. STUART."

Witness was thoroughly familiar with the organization of the different bureaus of the Navy Department and when Judge Finney called him up on January 14, 1922, and asked for the information

referred to in the above exhibit, this had been going on—had been simmering—for some time prior to the 14th of January and he knew, naturally, the Bureau of Yards and Docks was interested in the specifications as it was part of the duty of that Bureau to draw all of the specifications and plans for a plant of that kind if the Navy was going to do the work. Witness was not a member of the Secretary of the Navy's Council and never attended any of its meetings. He was not in Washington April 25, 1922, the date of the first contract in question in this case, being at that time at his new station in Charleston. From April, 1920, until the Fuel Office was abolished October 18, 1921, witness' desk was in the Bureau of Engineering and he was discharging duties that ran along parallel, that is, duties pertaining to the Fuel Office as well as those pertaining to the Bureau, all of his time not having been taken up with naval petroleum matters. During that period in respect to such part of his work as related to the Naval Fuel Office he reported directly to the Secretary of the Navy and in relation to the rest of his work, which he did as an engineering officer of the Bureau, he reported to the Chief of the Bureau of Engineering. He was an officer of the Engineering Corps of the Navy and subordinate to the chief of that bureau. Admiral Robison became chief of the Bureau of Engineering upon the retirement of Admiral Griffin about the first of October, 1921. A "tour of duty" means the term or period a naval officer serves at a given station or place, the normal tour of duty of an officer is two

(Testimony of H. A. Stuart.)

or three years. Witness came to duty in Washington August 21, 1918, and remained on duty there until April 5, 1922. In October, 1921, Admiral Robison asked to have witness retained in the Bureau of Engineering on duties connected with oil reserves, in practically the same capacity in which he had been serving, with a different head; that is, Admiral Robison recommended that he be retained on the same duty, reporting to him rather than directly to the Secretary, and Admiral Robison told witness that he wanted him to stay there. The Bureau of Navigation is the personnel bureau of the Navy Department [81—7] which issues orders with relation to stations of naval officers.

Thereupon there was offered and received in evidence as Defendants' Exhibit "B," communication dated October 8, 1921, from the Bureau of Engineering to the Bureau of Navigation, which reads:

DEFENDANTS' EXHIBIT "B."

"1. Commander H. A. Stuart, U. S. N., has been in charge of matters pertaining to the Naval Petroleum Reserves in the Bureau of Engineering since he reported for duty in the Bureau. During the last eighteen months he has devoted his time exclusively to this duty. He is thoroughly familiar with the laws pertaining to the establishment of the Reserves and with the many legal suits in connection therewith.

"2. While the administration of these Reserves has recently been turned over to the Department of the Interior, the Bureau believes that it highly necessary for the interest of the Navy to retain, at least temporarily, an officer for duty in connection with these Reserves. It is believed there is no one in the Navy with as comprehensive a grasp of the situation as Commander Stuart and the Bureau therefore recommends that for the present he be retained on this duty.

J. K. ROBISON,
Chief of Bureau."

Thereupon as Defendants' Exhibit "C" the following extract from minutes of a meeting of the Navy Council held in Washington, October 18, 1921, was offered and received in evidence:

DEFENDANTS' EXHIBIT "C."

"No. 2. The Secretary stated that unless there was objection he would sign an order transferring all the Fuel Oil Activities heretofore carried on under the Secretary's office over to the Bureau of Engineering. There was also short discussion about our supply of oil on hand, contracted for, etc. The question of leases would be handled by the Department of the Interior."

There was then offered and received in evidence as Defendants' Exhibit "D" order issued by the Secretary of the Navy to Commander Stuart, reading as follows:

DEFENDANTS' EXHIBIT "D."

"24 October, 1921.

Subject: Change of Duty.

1. You are hereby detached from duty in the office of the Secretary of the Navy, Navy Department, and from such other duty as may have been assigned you; will report to the Chief of the Bureau of Engineering, Navy Department, for such duty as he may assign you.

2. This employment on shore duty is required by the public interests.

EDWIN DENBY."

The decision to award lease for strip in Section 1 under above-mentioned bids received April 25, 1921, was made by the interior Department, witness was present when bids were gone over, and while he thought that the United Oil Company bid was perhaps the best he did acquiesce in the agreement [82—8] that the lease be awarded Pan American Company; there were also present at the time Dr. Mendenhall, Chief Geologist of the United States Geological Survey, Interior Department; Mr. Cutler, an official of the Bureau of Mines, who was at that time on duty in the Internal Revenue Department, Petroleum appraisals section; and Mr. Ambrose, Chief Petroleum Technologist of the Bureau of Mines; witness does not remember who else was present; the matter was discussed and all agreed upon the awarding of the lease to Pan American Company on the basis of one of its bids; witness

(Testimony of H. A. Stuart.)

thinks that after that recommendation went in perhaps Secretary Fall himself decided to give the lease to Pan American, and it was after this that Admiral Griffin and witness called on Secretary Fall as testified on direct; witness cannot fix the exact time of that call but it was subsequent to June 2, 1921; it is five or ten minutes walk from the Navy Department to the Interior Department in Washington. On the occasion regarding which witness testified before Admiral Griffin and witness called on Secretary Fall they had heard that the President had approved the giving of a lease to the United Midway Oil Company and on their second visit to Mr. Fall's office on the same day they were shown the approval of the President on a basis of settlement with the United Midway; the paper shown the witness, as he recalls it, bore the signature of Warren G. Harding. Bids received April 25, 1921, for strip lease in Section 1 were sent from the Navy to the Interior Department June 2, 1921, and some time thereafter witness attended a conference with Mendenhall, Cutler and Ambrose regarding which he has testified.

In December, 1923, as testified before the Public Lands Committee of the Senate, there was exhibited to witness the approval of President Harding, dated July 8, 1921, of the recommendation of the Secretary of the Interior for settlement of a claim of the United Midway Oil Company; witness is inclined to think that there must have been more than one approval of President Harding's on that subject for

(Testimony of H. A. Stuart.)

as he understands it the one date of July 8, 1921, was the President's final approval of the lease as the United Midway got it. Witness identified paper dated "Department of the Interior, Washington, July 8, 1921," addressed "My dear Mr. President," signed by Albert B. Fall, "Approved, Warren G. Harding, at the White House, July 8, 1921," as the paper seen by him when he testified before the Senate Committee but he does not think that that was the same paper which he saw in Secretary Fall's office when he called with Admiral [83—9] Griffin, he is sure it was not this one, if he and Admiral Griffin read it at all they merely glanced at it because they had no reason whatever at the time to doubt Mr. Fall's word; they had heard it had been approved and knew that the United Midway people had been around Washington for some time trying to get the lease; his recollection is that President Harding approved the settlement with the United Midway under which that Company would get land in addition to the twenty-two well strip which was to be leased to the Pan American, the strip to the south of that which would make practically all of the north half of Section 1; that that action of the Secretary of the Interior, approved by the President, was at variance with what witness would have recommended in the matter; and he knows that subsequent to the time he talked with Mr. Fall there was approved by the President final disposition of the United Midway claim, on July 8, 1921, under which that claim was settled by a lease of a strip for

(Testimony of H. A. Stuart.)

eight wells, so that together two leases of the United Midway and the Pan American represented leases which witness had acquiesced in at the Mendenhall-Cutler-Ambrose conference, as far as the land was concerned.

The witness Stuart having been excused plaintiff offered, and there was received in evidence as Plaintiff's Exhibit No. 9, a lease from the United States to United Midway Oil Land Company, dated July 8, 1921, headed "Lease of Oil and Gas Lands Under the Act of February 25, 1920, Section 18a," by which there was leased a strip of land 2,550 feet long, 900 feet wide, along the north line of Section 1, Naval Reserve No. 1, for a period of twenty years, with the preferential right in the lessee to renew for successive periods of ten years, on such reasonable terms and conditions as lessor prescribes, unless otherwise provided by law at the time of the expiration of such period, in consideration of a royalty of $55\frac{1}{2}$ per cent of all oil produced; $12\frac{1}{2}$ per cent on gas where the average production per day for the calendar month is less than 3,000,000 cubic feet, and $16\frac{2}{3}$ per cent where the average is 3,000,000 cubic feet or over; $16\frac{2}{3}$ per cent on casing-head gasoline extracted from the gas produced. Lease requires lessee to begin drilling operations within thirty days and complete the eight wells within eight months. All other clauses, terms, and conditions of the lease are the same as provided in Exhibit "F" to Plaintiff's Amended Bill. It is signed: "The United

(Testimony of H. A. Stuart.)

States of America, by Albert B. Fall, Secretary of the Interior. United Midway Oil Land Co., by J. W. Staygers, its [84—10] attorney in fact."

Thereupon there was offered and received in evidence, as Plaintiff's Exhibit No. 10, a lease dated July 12, 1921, between the United States and Pan American Petroleum Company, headed "Lease of Oil and Gas Lands Under the Act of June 4, 1920," which in substance is the same as Exhibit 9 (and Exhibit "F" to Plaintiff's Amended Bill), except that it covers a 900-foot strip along the north line of so much of Section 1 as not leased to the United Midway Company and a strip 900 feet long by 900 feet wide along the east boundary of said section. This lease is signed "United States of America, by Albert B. Fall, Secretary of the Interior. Pan American Petroleum Co., by E. L. Doheny, President," the latter signature being witnessed by Joseph J. Cotter.

Testimony of Irwin F. Landis, for Plaintiff.

IRWIN F. LANDIS was thereupon called as a witness by the plaintiff and testified that he is an officer of the Navy and since March 20, 1924, has been on duty as an inspector of naval petroleum reserves in California, having held a similar position between July 28, 1915, and June 30, 1922, at that time having his office in San Francisco; compliant

(Testimony of Irwin F. Landis.)

to instructions received by him from the Navy Department (Plaintiff's Exhibit 6) witness advertised invitations for bids in two papers in San Francisco and one in Bakersfield, and in response to that advertisement eleven bids came to his office and he forwarded them to the Navy Department in Washington. Subsequent to the issuance of the President's Executive Order dated May 31, 1921 (Plaintiff's Exhibit No. 3), Commander Stuart advised him thereof. Under date of August 4, 1921, witness received the following communication (Plaintiff's Exhibit No. 11):

PLAINTIFF'S EXHIBIT No. 11.

"My dear Mr. Commander:

I arrived here this afternoon and will be here all day Friday, at the St. Francis Hotel.

I shall be very glad indeed to have you telephone me upon receipt of this note, that I may make an appointment to see you at some hour Friday to suit your convenience.

Very truly yours,

ALBERT B. FALL."

Pursuant to the foregoing witness called on Secretary Fall August 5, 1921, and there was discussed the naval reserve situation in general and the question of necessary offset wells in particular, and whether or not additional offset wells should be drilled in Naval Reserve No. 2; witness told Secretary [85—11] Fall that in his opinion Naval Re-

(Testimony of Irwin F. Landis.)

serve No. 2 was then pretty well taken care of from a protective point of view and that possibly four or five wells might later be drilled on some of the holdings of the Associated Oil Company but no other; as regards Naval Reserve No. 1 that he thought the so-called strip lease in Section 1 sufficiently protected the naval reserve from the operations of the Pacific Oil Company and Standard Oil Company in Sections 35 and 36. Secretary Fall said he was particularly anxious to carry out the Navy Department's views with regard to the conservation of the reserves, and that his idea was only to drill such wells as in the opinion of the Navy Department and the Interior Department were necessary for proper protection. As regards the leases made in the previous July with United Midway and Pan American Companies (Plaintiff's Exhibits 9 and 10), as originally advertised, one lease was to be made of the land covered by those two leases, and Mr. Fall explained how it happened that two leases had been made; he also stated in that connection that Mr. Doheny had been in Washington complaining that in his judgment the royalties provided in Exhibit 10 were too high for that lease, and Secretary Fall thought that probably they were. There was discussed the proposition of the Pacific Oil Company concerning the exchange of lands or a nondrilling agreement, and witness told Secretary Fall that that Company had interests very much similar to those of the Navy Department in that they had a larger

(Testimony of Irwin F. Landis.)

number of sections and the protected drilling was all that they could take care of, and they believed in conserving the lands in very much the same way that the Navy Department did, and suggested that some agreement might be entered into with the Pacific Oil Company for an exchange of lands whereby the Navy Department might acquire Sections 29, 31 and 33 in Naval Reserve No. 1, lying between the two sections 35 and 36, and Secretary Fall requested witness to take that matter up with officials of the Pacific Oil Company; witness did so, had a conversation with Mr. D'Heur and Mr. Lombardi with reference to it; as a result of those conversations nothing was done. Previous to that witness had received a letter from Mr. D'Heur which in June 1921 he had transmitted to the Navy Department in Washington; witness informed Secretary Fall that he had transmitted such a letter to the Navy Department and the Secretary indicated that he wanted the matter taken up as already testified. Secretary Fall said that he wished full co-operation between the departments and between the office of witness and the Interior Department and stated that on his [86—12] return to Washington he would suggest to Secretary Denby that witness be authorized to communicate directly to Secretary Fall as well as directly to the Navy Department in order to expedite matters between the Interior Department and the office of witness, but witness does not know whether that was done, he never had any official communica-

(Testimony of Irwin F. Landis.)

tion from any official in Washington connected with the Interior Department after that and continued to report from time to time to the Navy Department.

Commander Landis saw Dr. H. Foster Bain, Director of the United States Bureau of Mines, and Mr. A. W. Ambrose, Chief Petroleum Technologist of that Bureau, in San Francisco, January, 1922, at which time a general discussion was had with regard to the naval reserves and drainage and drilling, and the question of trading or transferring with the Pacific Oil Company along the same lines as had previously been discussed with Secretary Fall. In the course of the conversation (in January, 1922) witness mentioned Commander Stuart, and having written him about some matter pertaining to the Navy reserves, Dr. Bain stated that he now pays no attention to Commander Stuart but went over his head to Admiral Robison.

In November, 1921, Frank Hall, President of the Boston Pacific Oil Company, requested of witness information regarding a telegram he had received from the Interior Department; telegram in effect was this: "Are you willing to drill up all of your holdings to the extent of one well to ten acres? If so, how soon can you begin operations?" Witness had no previous knowledge of any such purpose on the part of the Navy or Interior Department and he made inquiries of the Associated, Union, General

(Testimony of Irwin F. Landis.)

Petroleum, and Murvale Oil Companies, and found that they had similar telegrams.

From the time when witness saw Secretary Fall in the summer of 1921 he was not consulted with regard to any policy of drilling in naval reserves by Secretary Denby or Admiral Robinson or Secretary Fall nor did he have any communication with those gentlemen on the subject.

He was relieved from duty as officer in charge of Naval Petroleum Reserves on June 30, 1922. From 1915 onward he was on that duty with headquarters in San Francisco with instructions to map the naval reserves and get information regarding the physical characteristics of them, which duty included a study of production and of matters connected therewith; he had production figures of [87—13] most of the companies in the naval reserves.

The witness was not cross-examined.

Plaintiff's Exhibit No. 12 was offered and received in evidence, the same being a letter addressed to Colonel E. L. Doheny, reading as follows:

PLAINTIFF'S EXHIBIT No. 12.

"July 8, 1921.

My dear Colonel:

I desire to express to you my very sincere appreciation of your generosity and patriotism in surrendering a portion of your lease-bid in naval reserve No. 1.

I have settled the matter to-day and have signed your leases, sending them over to you by Mr. Cotter.

I filed with the President a letter explaining this entire situation and the conclusions reached and action which I had taken. In this letter to the President among other things, I said:

‘Thus my position is that of a trustee for the reclamation fund and for the State in one instance, and a trustee for the Navy for the public lands upon which there is no private claim within the naval reserve.

‘Holding the view which I did hold, as to the Midway Co. having some equity, but being desirous of adjudicating the matter if possible, to the end that the Navy might have no possible objection, I called upon Colonel Doheny, head of the Pan American Co., by telegram, stating the facts to him and that he was entitled to his lease and would have it executed under one of his bids, but asking if it were possible for him to assist me in an adjustment of the Midway claims, by agreeing to surrender 8 wells out of the 22 which were advertised by the Navy and allotted to him under his bid; he retaining the lease upon the other 14.

‘I thought that I was imposing upon Mr. Doheny and even at the instance of the Navy officials was not justified in doing so except through a personal appeal based upon our long-time acquaintance and my knowledge of the patriotism and sense of justice.

'I received an immediate favorable response and I have had the leases drawn to himself for the 14 wells, and to the Midway Co. for 8 wells which he surrenders.'

I desire the President's file to show my appreciation of your action in this matter, which, however, I had explained to him verbally.

I shall not forget your assistance in this case.

There will be no possibility of any further conflict with the Navy officials and this Department, as I have notified Secretary Denby that I should conduct the matter of naval leases under the direction of the President, without calling any of his force in consultation unless I conferred with himself personally upon a matter of policy. He understands the situation and that I shall handle matters exactly as I think best and will not consult with any officials of any bureau in his department, but only with himself and such consultation will be confined strictly and entirely to matters of general policy.

Very sincerely yours,

ALBERT B. FALL.

Col. E. L. Doheny,

Suite 2805, 120 Broadway,

New York City." [88—14]

Thereupon was offered and received in evidence Plaintiff's Exhibit No. 13, being a letter addressed to Hon. Edwin Denby, Secretary of the Navy, dated July 23, 1921, reading as follows:

PLAINTIFF'S EXHIBIT No. 13.

“Dear Mr. Secretary:

In connection with the recent authorization to the Pan American Petroleum Company and the United Midway Oil Company to drill 22 offset wells in naval petroleum reserve No. 1, California, I would like to be advised, as promptly as possible, what arrangements the Navy desires to be made for the handling and disposition of its royalty oil from said wells as well as from any other wells in naval reserves, to which the Navy is entitled to royalty in kind.

As the lease provides that purchasers will take care of the oil only for a limited period, it is important that provision be made to dispose of same promptly. I suggest the desirability of effecting an exchange of the crude oil received as royalty for an equivalent value of fuel oil, to be stored without expense to the United States by the other party to the exchange. Preferably the exchange should be not only of crude oil for fuel oil in storage but for the tanks containing the Navy's stored oil. In other words, my suggestion is that the crude oil be exchanged for tanks and fuel oil, the title to both to be vested in the Navy as a result of the exchange.

If this plan meets with your approval, and you desire me to undertake to consummate the arrangement, I shall be glad to do so. In any event, I

should like to hear from you on the subject as soon as possible.

Sincerely,

ALBERT B. FALL,
Secretary."

Plaintiff's Exhibit No. 14 was then offered and received in evidence, and is a letter addressed to the Secretary of the Interior, dated July 29, 1921, and reading as follows:

PLAINTIFF'S EXHIBIT No. 14.

"My dear Mr. Secretary:

Replying to your letter of the 23rd of July, I am glad to acquiesce in the suggestion made by you.

It will be of great benefit to the Navy to have the royalty crude oil from wells on the naval reserves (both those already in operation and those to be drilled by the Pan American Petroleum Co. and the United Midway Oil Co.) exchanged for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, the usefulness to the Navy would be increased if they could be located at any one of the following points: San Diego, San Pedro, San Francisco Bay, Puget Sound, Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation 'Fuel and transportation' for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against this appropriation.

EDWIN DENBY." [89—15]

Thereupon plaintiff offered in evidence letter dated June 13, 1921, from A. D'Heur, Vice-President of the Pacific Oil Company to Lieutenant Commander Landis, to the admission of which letter in evidence the defendants objected on the ground that the contents of said letter were irrelevant to any issue in this case, that the same were immaterial and incompetent; that said letter as to defendants constituted hearsay; that no proper foundation for its receipt in evidence had been laid and that it was not shown, or offered to be shown, that the defendants had any knowledge of it or were in any way connected with it. Counsel for plaintiff stated that plaintiff proposed thereafter to show that said letter was forwarded by Commander Landis to the Navy Department and was by that Department forwarded to Secretary Fall in the Interior Department, after which statement defendants' objection, on the grounds above stated, was renewed. The Court overruled said objection, and admitted said letter in evidence, to which ruling and action of the Court defendants duly noted an exception. Said letter was marked Plaintiff's Exhibit No. 15 and in substance stated that as the Navy Department and the Pacific Oil Company each had con-

siderable holdings within the boundaries of Naval Reserve No. 1, and it was desirable to hold the oil in the ground and to prevent cut-throat drilling, and as the best way to reserve oil in the ground is to consolidate holdings in as large blocks of land as possible, and it would be a great advantage to the Navy to hold several sections together, rather than alternate sections, it was proposed by the Company, first, that certain sections in the area be traded between the Navy and the Company so as to throw the holdings of each into a single block; second, as an alternative, if the suggested trading does not meet with the approval of the Navy, that negotiations be entered into with the Pacific Oil Company looking toward an agreement to prevent cut-throat drilling, such an agreement to provide that each owner shall not drill any more wells within 900 feet of their boundary lines, and will contain a clause for cancellation upon, say, three months notice; third, that the Navy lease to the Company, under a suitable royalty to be determined later, a strip of land along the border line between sections held by the Navy and that Company; the Company will then drill this strip on a schedule which will insure the Navy a steady supply of fuel oil through royalty at low cost to the Navy. Negotiations and discussions were suggested. [90—16]

Thereupon there were severally offered and received in evidence correspondence based upon and resulting from this last exhibit, each of the exhibits in said correspondence being made the subject of the same objection, ruling, and exception as related

to the above Exhibit 15; said documents as received were numbered Plaintiff's Exhibits 16 to 22 inclusive and were, in substance, as follows:

Plaintiff's Exhibit No. 16 was a letter dated June 22, 1921, from Commander Landis to the Secretary of the Navy through Chief of Bureau of Engineering and transmitted the foregoing D'Heur letter with the following statements, in substance, made by the writer (Landis): The Pacific Oil Company is in sympathy with the Navy Department's policy to restrict drilling in the naval reserves to the minimum consistent with the proper protection of its interests; reference is made to the alternating Government and Pacific Oil Company's ownership of sections in Naval Reserve No. 1 (which is shown elsewhere in this record on map of said reserve); Sections 31 and 33 of 30-24 are undeveloped; he is informed that the Company does not contemplate immediate operations thereon; on 31-30-24 there are five producing wells of a very light gravity of oil; in 35-30-24, just north of the naval reserves, the Pacific Oil Company has nine wells, producing at this time an average of 1075 barrels per well per day, two being first line wells, the others being more than 900 feet from the south line of the section. On May 25, 1921, there was forwarded to the Navy letter signed by R. J. White and H. P. Coffin making application for a lease to a strip in Section 2-31-23, enclosed with which was a map of Elk Hills showing development as of April 1, 1921; the application of White and Coffin, if approved, would provide for offset-

ting the wells already drilled in Section 35-30-24; the Pacific Oil does not intend to drill any more wells in that section less than 900 feet from the edge; the suggestions of Mr. D'Heur are worthy of consideration.

Plaintiff's Exhibit 17 is letter from Secretary Denby to Secretary Fall dated June 28, 1921, transmitting the aforementioned Landis and D'Heur letters and stating that in view of the fact that it is highly desirable to have the lands in this reserve consolidated in as large a block as possible, it appears advisable that an effort be made to come to an agreement of some character with the Pacific Oil Company; writer (Denby) therefore of opinion advisable to open negotiations with this Company, and in view of its general attitude, both in past and [91-17] present, it is believed a satisfactory agreement can be concluded between this Company and the two departments concerned.

Plaintiff's Exhibit No. 18 is a letter dated July 1, 1921, to Secretary Denby from Secretary Fall acknowledging receipt of the last mentioned and stating that early opportunity will be taken to look thoroughly into the matter and advise in the premises.

Plaintiff's Exhibit No. 19 consists of a "Memorandum for Mr. Safford" (who it is stipulated was at the time Administrative Assistant to the Secretary of the Interior), dated July 7, 1921, from George Otis Smith, Director of the Geological Survey, stating that the above correspondence (Exhibits 15 to 18) has been forwarded by Safford to the Sur-

vey and that the result of studying of the matter was embodied in the enclosed draft of letter to D'Heur which was transmitted for Secretary's consideration.

Plaintiff's Exhibit No. 20 bore a pencil notation, made April, 1924, reading: "This letter evidently not sent but replaced by letter of July 18 as written in Secretary's office," and consists of a draft of letter to Mr. D'Heur prepared by Mr. Smith for the signature of Secretary Fall, and is in substance the same as letter dated July 18th (Exhibit 21, *infra*), with the exception of the following two paragraphs omitted from the letter as sent: [92—18]

PLAINTIFF'S EXHIBIT No. 20.

"From the Government's point of view the first proposal seems to me best, because while the Navy of course needs a certain amount of oil for immediate peacetime purposes, the value to it and to the country, of the reserves is not to supply current needs but to insure us against that future emergency when the oil supplies of the United States and perhaps of the world are depleted or exhausted and when that nation with an assured domestic reserve may be able to avoid war because of that reserve or be victorious if war can not be avoided. This is the basic purpose of the naval reserves, and that purpose is defeated by any plan which provides for early development.

I should therefore greatly prefer to enter upon negotiations with your company upon the basis of your first proposal."

Plaintiff's Exhibit No. 21 consists of a letter dated July 18, 1921, copy of which was transmitted to the Navy Department for its information, which is addressed to Mr. A. D'Heur, Vice President, Pacific Oil Company, and reads:

PLAINTIFF'S EXHIBIT No. 21.

"Dear Mr. D'Heur:

Your letter of June 13, 1921, addressed to Lieutenant Commander Landis, U. S. Navy, has been forwarded to me for consideration by Secretary Denby in pursuance of the administrative order of May 31, 1921, placing the administration of naval reserves in the Department of the Interior.

In your letter you suggest the desirability both from the point of view of the Navy Department and of the Pacific Oil Company of an attempt to reach an agreement mutually satisfactory to the Government and to the company, by which the primary purpose of the naval reserves—namely, the retention in the ground of a supply of oil ample for the needs of the Navy in the future—may be accomplished and at the same time the interests of your company, through its private holdings, in the reserve duly protected.

Your suggestion and the spirit which prompts it are appreciated, and I join with you in the belief that negotiations be had if possible to accomplish this end. I have noted the three suggestions which are contained in your letter, and which I agree should be used as a basis for preliminary discussion. I am informed that there

does not now exist in any administrative officer authority to effect an exchange of properties, and that it will be necessary to obtain additional legislation before any final agreement can be consummated. This, however, does not preclude preliminary consideration being given the problem, and I am of the opinion that negotiations should be entered into and after determination of a tentative agreement the necessary legislation, either specific or general, may be secured through Congressional action.

Meanwhile it seems to me wise that both the company and the Government should maintain the status quo, so far as possible, in Naval Reserve No. 1. I should be glad if your company will do no other than necessary defensive drilling in the reserve pending the outcome of negotiations. Meanwhile it is my intention to grant no drilling rights on Government lands within the reserve other than such rights as it may prove necessary to grant in the settlement of pending claims or to offset wells already drilled or to be drilled on private lands and so situated as to draw oil from the Government reserves. [921½—19]

I assure you that if this be agreeable to you, I will be pleased to arrange for a preliminary meeting between representative of your company and representatives of the Department here in Washington, or if you prefer to consider your proposals through Commander Landis in San Francisco. However, I am of the opinion that better results are obtainable by conference where the details can

be discussed more freely than if the proposals are submitted in writing.

Thanking you for the spirit which prompts the proposals on your part, and awaiting your reply in this matter, I am

Respectfully,

ALBERT B. FALL,
Secretary."

Plaintiff's Exhibit No. 22 is letter to Secretary Fall dated July 26, 1921, reading:

PLAINTIFF'S EXHIBIT No. 22.

"Dear Mr. Fall:

I acknowledge receipt of your favor of July 18th, in answer to mine of June 13th, and would assure you that in the very near future I will answer the different matters brought up therein seriatim.

In the meantime in accordance with your suggestion, I have already stopped work on the two wells which we were starting to drill on the lines of the Naval Reserve land in the Elk Hills.

Thanking you for your interesting reply to mine of June 13th, I remain

Respectfully yours,

A. D'HEUR."

Thereupon plaintiff introduced and there was received in evidence letter dated October 6, 1921, from Admiral J. K. Robison to Mr. E. L. Doheny, reading:

"My dear Mr. Doheny:

I have wanted to write to tell you of the good fortune that has come to me. Because of the many

ways in which you have indicated your friendship for me, I am sure that you will be glad. The President has nominated, I have been confirmed, and am now serving as Engineer-in-Chief of the Navy.

It is a pretty good billet. As you know, it gives me control of large activities, rank while holding the office of Rear Admiral, and in particular it gives me responsibilities and authority in connection with the maintenance and unbuilding of our Navy that I am glad to assume. To have been selected from my fellows for this position is grateful,—the principal joy that I get, of course, comes from the satisfaction of my family and friends.

With best wishes for your future and with affectionate remembrance of Mrs. Robison and myself to your family, I am

Most cordially yours

J. K. ROBISON,

Engineer-in-Chief, U. S. Navy."

Thereupon there was received in evidence Plaintiff's Exhibit No. 24, letter dated October 25, 1921, from the Secretary of the Navy to the Secretary of the Interior, reading: [93—20]

PLAINTIFF'S EXHIBIT No. 24.

"My dear Mr. Secretary:

Rear Admiral J. K. Robison reported to me that as a result of his interview with you on Saturday, October 22, the following general agreement in connection with the naval petroleum reserves was reached:

1. That arrangements will be made by the Interior Department to have naval petroleum reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled.

2. That the amount of drilling with consequent exhaustion of the reserves shall be kept as low as practicable without risking the depletion of the reserves by other parties.

3. That the equivalent of all royalty oil shall be delivered to the Navy in the form of fuel oil at such points on the Pacific Coast as may be found necessary for naval use, and that this exchange of crude oil for fuel oil will be affected on as favorable terms as it is possible to obtain. It is presumed that under favorable circumstances and terms arrangements may be made for including points on the Atlantic Coast for the delivery of an equivalent supply of fuel oil to the Navy.

4. That the equivalent of so much of the royalty oil as is not used by the Navy is to be devoted to the construction of oil storage at Pearl Harbor, Hawaii, and at other points to be hereafter designated by the Navy Department, the cost of the tanks to be credited to the royalty due the Navy.

5. That the Interior Department will exercise its best efforts to obtain for the Navy as large royalties and as favorable terms as practicable by public competition or otherwise.

6. That the terms for conversion of the crude oil at the well to fuel oil at tidewater or in tanks to be provided by the lessor will be submitted to

the Navy Department for approval of the qualities, deliveries, engineering, and other features involved.

7. That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only.

8. That every effort will be made by the Interior Department to expedite the solution of this problem so that fuel oil at Pacific tidewater in exchange for royalty crude oil may be delivered as soon as possible to naval vessels and so that the erection of suitable storage facilities for 1,500,000 barrels of fuel oil at Pearl Harbor may be undertaken and expedited.

9. That the development of naval petroleum reserve No. 3 is not to be undertaken except to protect the government against depletion of the reserve by other parties.

10. The general intent of this agreement is to transform royalty oil into either (a) fuel oil for current naval use, or (b) fuel oil stored where required by the Navy as a reserve, the storage, of course, to be naval property and to accord with naval requirements.

In accordance with the foregoing understanding there is returned herewith letter from the Interior Department concerning leases that it is proposed to enter into with certain parties in naval petroleum reserve No. 1. Such details are, under the foregoing announced policies, to be left entirely to the Department of the Interior.

Information is requested as to whether the foregoing policies are in all respects agreeable to the Department of the Interior, and also when it may be expected that the Navy Department will begin to receive fuel oil as part of its royalties.

EDWIN DENBY." [94—21]

In the following order there were introduced and received in evidence exhibits numbered, dated, and consisting of the following:

No. 24-A, letter of October 30, 1921, from Secretary Fall to the Secretary of the Navy, reading:

PLAINTIFF'S EXHIBIT No. 24-A.

"My dear Mr. Secretary:

I have your letter of October 25 and have just consulted Admiral Robison about the subject matter.

Responding to your request for information as to whether the policies set forth in the letter are agreeable to the Department of the Interior, I can say without hesitation that they are entirely agreeable and will be carried out to the very best of my ability.

Of course, should any new matter come up at any time I will unhesitatingly and immediately consult you personally or through Admiral Robison.

As to the definite date when you expect fuel oil as payment of your royalties, I can give you accurate information within a very few days.

Several of your wells are coming in, one or two are in, and we can exchange immediately for fuel

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oil certificates through which you can draw fuel oil as needed at Pacific ports.

Very sincerely yours,

ALBERT B. FALL."

No. 25, dated November 8, 1921, from the Secretary of the Interior to the Secretary of the Navy, reading:

PLAINTIFF'S EXHIBIT No. 25.

"Dear Mr. Secretary:

Referring again to paragraph 3 of your letter of October 25, 1921, regarding an exchange of royalty oil produced on Naval Petroleum Reserves in California for an equivalent amount of fuel oil to be delivered to the Navy at Pacific Coast ports:

I am planning to consider bids made by several oil companies in California relative to this exchange and in order to do this I would like to have from your department specifications for fuel oil that will be acceptable to the Pacific Coast fleet. Owing to the urgency of this matter I would appreciate a prompt reply.

Respectfully,

ALBERT B. FALL,

Secretary.

No final action upon bids will be taken until after conference as to amts., points of delivery, etc.

FALL."

No. 26 is letter dated November 10, 1921 from the Secretary of the Navy to the Secretary of the Interior, signed "Edwin Denby," containing Navy fuel oil specifications requested in Exhibit 25.

No. 27 consists of nine separate telegrams addressed by Secretary Fall, under date of November 14, 1921, to sundry lessees who had leases under [95—22] the Act of February 25, 1920, in Naval Reserve No. 2, there being two forms of said telegrams, one of which forms was sent to the Murvale and Union Oil Companies, reading as follows:

PLAINTIFF'S EXHIBIT No. 27.

"Advise if you can and will proceed promptly to drill the necessary wells to fully develop all the area you relinquished in section thirty-four, township thirty-one, range twenty-three, and the sixty acres relinquished by your predecessor Buena Vista Oil Company in Section thirty-two, township thirty-one, range twenty-four in second naval reserve in event preference right well permits or area leases are awarded you. If so wire royalty bid.

FALL,
Secretary."

The other form of telegrams constituting said exhibit was sent to Lillie M. Jones, Wilkes Brothers, Caribou, Consolidated Mutual, Record, and General Petroleum companies, and, with a mere change of figures and sections referred to, reads as follows:

"Advise if you can and will proceed promptly to drill the necessary wells to fully develop all the area you relinquished in section thirty-two, township thirty-one, range twenty-four in second naval reserve in event preference right well permits or

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area leases are awarded you. If so wire royalty bids.

FALL,
Secretary."

No. 28 is letter dated November 15, 1921, addressed to the Secretary of the Interior, reading as follows:

PLAINTIFF'S EXHIBIT No. 28.

"Dear Mr. Secretary:

Captain Hepburn, the Acting Chief of the Bureau of Engineering, informs me that as a result of his interview with you on Saturday, 12 November, it is his understanding that the Department of the Interior expects to be able to furnish the Navy Department within a few days a certain quantity of fuel oil in exchange for royalty crude oil from the Naval Petroleum Reserves, provided the quantities required and the points of delivery are known.

I would, therefore, inform you that the Navy Department requires for current use for the period 1 December 1921 to 3 June 1922, the end of the fiscal year, a total quantity of 1,500,000 barrels of fuel oil. The delivery of this oil should be made in approximately equal monthly installments at any pipe line terminal at which Navy tankers can load. The maximum draft of the Navy tankers is 28 feet.

As a part of the above 1,500,000 barrels it is desired to obtain tanker deliveries at other than pipe line terminals as follows:

San Diego.....	200,000	barrels
Pearl Harbor.....	125,000	“
Cavite	150,000	“
Puget Sound.....	80,000	“

These deliveries can be made at practically any time during the period of the contract.

It is further desired, as a part of the above 1,500,000 barrels, to obtain barge deliveries—barges being property of the contractor—in approximately equal monthly installments as follows: [96—23]

Seattle, Washington.....	25,000	barrels
Point Wells “	15,000	“
Portland, Oregon.....		
Willbridge, “	15,000	“
Astoria “	10,000	“
Eureka, California.....	15,000	“
Mare Island Navy Yard and San Francisco Bay points....	180,000	“
San Diego, California.....	200,000	“

this delivery being an alternative to the tanker delivery mentioned in preceding paragraph.

It should be noted that these deliveries cover only a period of seven months. Owing to the uncertainty of the requirements after 30 June, 1922, it is deemed desirable to make a contract covering only seven months. It is anticipated that by next April or May definite requirements for the fiscal year 1923 will be known and a contract covering this period can then be made.

While it is not expected that the quantity of royalty crude oil will be sufficient to meet the full requirements of the Navy for fuel oil on the West

Coast and to build also a large amount of storage, I have endeavored to furnish you with a complete schedule of the Navy's needs with respect to fuel oil in Pacific waters. With the data herewith furnished, together with the information already at your disposal, I trust that you will be able to enter into a satisfactory contract with one, or several, of the various oil companies on the West Coast.

It would be appreciated if early information could be furnished as to the approximate quantity of fuel oil that is expected the Navy will obtain in order that additional contracts may be made to purchase the fuel oil necessary over and above that obtained from an exchange of royalty crude oil for fuel oil.

Sincerely yours,

EDWIN DENBY."

No. 29 is letter dated November 18, 1921, addressed to the Secretary of the Navy, as follows:

PLAINTIFF'S EXHIBIT No. 29.

"Dear Mr. Secy:

I have your letter of November 15, 1921, setting out in detail the fuel oil needed by the Navy Department, on the Pacific Coast between the period of December 1, 1921, and June 30, 1922.

In order to provide the Navy with as much of this fuel oil as possible, without cost by exchange of royalty oil on Naval Reserves No. 1 and 2 for fuel oil, I am taking immediate steps for the exchange of royalty oil from present producing wells and am planning to grant additional leases to be

drilled as rapidly as possible. This Department can carry on the preliminary work with its present force but the supervision of drilling, production and gaging of oil together with the computation of royalties on new wells will add a burden which cannot be carried with the present force.

At the time the leases were granted to the Pan American Petroleum Company and the United Midway Oil Company on Naval Reserve No. 1, your Department transferred to the credit of the Bureau of mines \$5500 for the supervision of the field work. It is my understanding that the Navy Department has certain additional funds which can be transferred to the account of the Bureau of Mines for the drilling now proposed, if this is true, I request the Navy Department transfer to the Bureau of Mines the sum of \$10,000 for the employment of field engineers, gagers, and clerks to supervise the drilling, production, gaging of oil and computation of royalties of the new work. [97—24]

You may be interested to know that this program should provide to the Navy during the calendar year 1922 at least \$3,000,000 worth of fuel oil in exchange for royalty oil and at a cost to the Navy Department, if the \$10,000 requested is transferred, at a yearly rate of \$25,000. I am very anxious that this additional drilling be started as soon as possible and I would appreciate any effort your Department makes to provide the immediate transfer

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of \$10,000 from the Navy Department to the account of the Bureau of Mines.

Respectfully,
(S.) ALBERT B. FALL,
Secretary."

No. 30 is letter addressed to Secretary Fall, signed Edwin Denby, dated November 21, 1921, acknowledging receipt of Exhibit 29 dated November 18, 1921, and stating that necessary steps were being taken to have transferred the sum of \$10,000 as requested.

No. 31 is letter dated November 22, 1921, addressed to the Secretary of the Interior, reading:

PLAINTIFF'S EXHIBIT No. 31.

"Dear Mr. Secretary:

Pursuant to our bid of April 25, 1921, the Department on July 12, 1921, issued to us Oil and Gas Lease for a 900 foot strip of land in Section 1, T. 31 S., R. 24 E., M. D. B. & M., Kern County, California, within Naval Petroleum Reserve No. 1. This lease contained provision for payment to the Government of a royalty of 55½ per cent, and a further provision that we should drill to completion fourteen (14) wells within eight (8) months.

We have drilled upon this land two (2) wells which are producing by pumping 225 barrels each per day; we *have* drilling six (6) additional wells, several of which are nearing completion; and we have several more rigs up ready to commence work. Our expenditures on this land up to October 1st have been \$540,000.00.

At the time this lease was issued, everyone concerned, including the Geological Survey and ourselves, expected that this would be large producing territory. The confident expectation, which was practically accepted as a fact, that large flowing wells would be obtained on this land, was the only justification for the unprecedented royalty fixed in the lease. As justifying this expectation it may be stated that nine wells drilled by the Standard Oil Company along the south line of Section 36, and adjoining our strip of land on the north, had an average initial production of 3,234 barrels per day, whereas these same nine wells now have an average production of 711 barrels per day, and five of them are producing from 240 to 330 barrels each per day; and another string of nine Standard wells to the north of the row just mentioned had an average initial production of 2,511 barrels per day, which has now decreased to an average daily production of 465 barrels.

The gas pressure in this land is gone, and instead of getting large flowing wells, the wells come in as moderate pumpers.

The cost of pumping in this deep field is high, and this in connection with the royalty of 55½ per cent exacted by the Government, renders it impossible for us to operate these small wells except at a loss, not to mention the fact that since the date of our bid (April 25, 1921), the price of this oil has declined fifty cents per barrel, from \$1.63 to \$1.13.

In view of these facts, it seems no more than just that the Government should afford us some relief. Had the territory proven up as was expected by all of us, no relief would have been asked [98—25] for by reason of the drop in the price of oil, but in view of the fact that instead of large production from these lands, we now cannot look even for flowing wells and will get only moderate pumping wells, we respectfully request that our royalty be revised so that the present rate will not apply to these small pumping wells, and we suggest that as equitable readjustment would be to fix the royalty on a sliding scale basis such as follows:

Wells producing over 1,500 barrels—55½ per cent.

Wells producing over 1,000 and not over 1,500 barrels—40 per cent.

Wells producing over 500 and not over 1,000 barrels—30 per cent.

Wells producing over 250 and not over 500 barrels—20 per cent.

Wells producing 250 barrels and under—12½ per cent.

I enclose copy of letter of our General Manager in this connection.

Respectfully yours,

PAN AMERICAN PETROLEUM COMPANY,

By J. J. COTTER."

Thereupon the fact was stipulated that lease between the Government and the United Midway Oil Land Company dated July 8, 1921 (Exhibit No. 9,

supra), has been assigned by that lessee to W. R. Ramsey, and plaintiff read in evidence Exhibit No. 32 dated November 23, 1921, addressed to the Secretary of the Interior, as follows:

PLAINTIFF'S EXHIBIT No. 32.

"Dear Mr. Secretary:

Our Company accepted as a compromise from your department an oil and gas lease, dated July 12, 1921, on a 52 acre tract of land in Section 1, Township 31, Range 24, East, Kern County, California. This lease required that we drill eight wells to be completed within eight months and that we pay the Government a royalty of 55½ per cent of all oil taken from the lease. We immediately started an active drilling campaign and notwithstanding the many difficulties in grading, road building, and labor troubles, we have up to this time completed three of the wells and have two in the course of drilling and have finished the grading and the preliminary work on the remaining three.

Reports from the geological department and government officials and actual results accomplished on adjoining leases apparently justified the unusually heavy royalty exacted from us by your department. Thus far we have expended the following sums of money:

Wells Nos. 1, 2, 3, 4, and 8.....	\$151,443.00
Ten inch casing.....	62,879.00
Six inch casing.....	49,841.00
Tankage	9,472.00
Fittings and machinery.....	1,700.00

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Boilers	18,485.00
Grading and roads.....	13,121.00
Buildings	6,260.00
Pipe Lines.....	9,473.00

Total expenditures..... \$322,674.00

[99—26] and when you take into consideration the amount previously expended by us as shown by the records, our total expenditures exceed \$500,000.00.

We now find that the gas pressure is off and that we are not on the crest of the structure as we all believed we were at the time of making this lease. Of the three wells we have completed, one is practically a dry hole. Our No. 2 well pumped 200 barrels when it came in ten days ago and then sand trouble occurred. We have been constantly working on it ever since but have been unable to get it pumping again. Our third well initial production is slightly over 200 barrels and will settle down to very much less than that.

Our lifting cost on a lease of this kind, located in an isolated place, and in such a deep field and with such heavy gravity oil, is so great that we cannot commercially operate the lease and pump the oil at the existing royalty, much less can we ever hope to recover any of the large sum of money which we have expended in developing and drilling this property and we earnestly petition your department for a prompt revision of our contract based on equitable royalties. We have certainly manifested our good faith in pursuing the development work and had the

wells come in anything like what we all figured on, we would be perfectly content with the present scale of royalty.

Three of the four wells of the Standard Oil Company offsetting our lease on the north, came in in excess of 6,000 barrels initial production. We believe a fair basis of royalty would be to start at one half of this or 3,000 barrel and to scale the royalties as follows:

Wells of 500 bbls or less.....	12-1/2 % royalty.
Excess oil over 500 bbls. up to 1000 bbls.	15 "
" " " 1000 " " 1500 "	20 "
" " " 1500 " " 2000 "	35 "
" " " 2000 " " 2500 "	40 "
" " " 2500 " " 3000 "	55-1/2 "
" " " 3000	55-1/2 "

We desire to call your attention to some of the facts in connection with the negotiations which led to our acceptance of the present lease with the royalties as specified. Our company had what we believed to be a just and equitable claim under the Placer Mining Law to 473 acres in this same section on which a large sum of money had been expended for prospecting and developing. The department, recognizing the justice of our claim and believing that this small strip of land offsetting these big wells, if drilled and developed, would not only compensate us for the new development expense but would ultimately repay the original expenditures. Results have proved otherwise and we

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ask that you readjust our contract along lines which are more equitable.

Respectfully submitted,
UNITED MIDWAY OIL LAND COMPANY,

Assigned to W. R. RAMSEY,
By J. W. STAYGERS, Attorney."

Whereupon there was received in evidence Plaintiff's Exhibit No. 33 as follows: [100—27]

PLAINTIFF'S EXHIBIT No. 33.

"PAN AMERICAN PETROLEUM & TRANSPORT CO.

Office of the President.

New York, November 28, 1921.

The Honorable the Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

Along the lines of your suggestion, I have made some inquiries regarding the cost of constructing tanks for the storage of one and one-half million barrels of fuel oil at Pearl Harbor. I find that the best price obtainable for these tanks, the Government to stand the cost of transporting the material from the ship's side to the tank site, and the cost of grading and otherwise preparing the tank site, is \$19,960 per tank, or \$0.363 per barrel of storage capacity.

The present price of crude oil in the field in California is \$1.13 per barrel. The present cost of fuel oil delivered at Pearl Harbor is \$1.90 per barrel.

The cost of 1,485,000 barrels of fuel oil delivered at Pearl Harbor at present rates would be \$2,821,500, which, added to the cost of constructing the 27 tanks necessary to store this amount of oil, which is \$538,920, makes a total of \$3,360,420.

Therefore, were we to construct the tanks and furnish the oil on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserve and to be leased to us, it would require a return to us in royalty crude valued at \$3,360,420, or 2,973,823 barrels, figured at to-day's price. Of course, interest on the money invested should also be figured until final adjustment is made through the payment of royalty oil.

I suppose you will turn this matter over to First Assistant Secretary Finney, who, with Rear Admiral Robison, may arrange the details of it during your absence, and as I also expect to be absent, I am confidentially furnishing Mr. Cotter with the information so that he can intelligently discuss the matter with Mr. Finney.

Cordially yours,

E. L. DOHENY."

Plaintiff's Exhibit No. 34 is letter dated November 29, 1921, addressed to Rear-Admiral John K. Robison, Engineer in Chief, Navy Department, reading:

PLAINTIFF'S EXHIBIT No. 34.

"My dear Admiral:

Mr. Cotter will wait upon you with data, etc., with

relation to oil tanks and royalty oils in connection with Pearl Harbor demands.

I have asked him also to hand you, for your inspection, the original of a letter from Colonel Doheny addressed to myself, containing a resume of the data.

Should you think best to accept this proposition then of course it would be necessary, in my judgment, to turn over to Col. Doheny, if we can do so, leases upon further wells or area in the naval reserve in which he is now drilling. If this is done it must be understood that the royalty must be made less than are the present royalties being paid by the Midway and Pan American.

The gas pressure is lessening to such a degree that the output of the wells of the two latter companies, as well as of other companies drilling in this neighborhood, is decreasing and is very disappointing. The two companies named are pumping their wells and of course they are not making any money but will experience a loss in [101—28] the payment of the fifty-five per cent royalty to the Government.

If you approve the proposition, will you kindly indicate to me such approval by simple endorsement upon Col. Doheny's letter to myself, signed by yourself. Your simple O. K. will be sufficient.

Very sincerely yours,
ALBERT B. FALL." [102—29]

Testimony of Graham Youngs, for Plaintiff.

Thereupon GRAHAM YOUNGS, called as a witness on behalf of plaintiff, testified that he is Treasurer of Blair & Co., Inc., Bankers, in the city of New York; he knows Messrs. E. L. Doheny, Sr., and Jr., and had a transaction with E. L. Doheny, Jr., in the office of Blair & Co., New York, in the latter part of November, 1921; witness had heard respecting his coming there later in the day and was asked by plaintiff's counsel "What information did you have regarding it?" Defendants objected to the question as calling for what some undisclosed person told the witness at a banking-house in New York, to which objection counsel for the plaintiff responded: "We will connect the matter up"; whereupon counsel for defendant repeated the objection on the ground that connecting up does not make hearsay evidence competent when it is hearsay; that if plaintiff's counsel will say he undertakes to show that either one of the defendants had some connection with the statement witness was asked to testify regarding, his position might be different, but the mere statement that counsel is going to ask witness to testify to what some unnamed and undisclosed person told him and will connect it up does not make competent as evidence that which is obviously hearsay. To this objection plaintiff's counsel responded that "The testimony thus far shows that the Dohenys were very substantial stockholders and officers of the Pan American Company, one of the de-

(Testimony of Graham Youngs.)

fendants here, and my question has to do with these men"; whereupon the Court ruled that in view of the statement of plaintiff's counsel that the evidence would be connected up the objection was overruled and the testimony would be received subject to being subsequently connected with the defendants and the issues; to which ruling defendants duly noted an exception and further, with the Court's permission, then granted, reserved the right thereafter before the close of the trial to move to strike this testimony from the record on the grounds, first, that it is incompetent, and, secondly, that it is not connected with the issues or the defendants. The question having been read, witness testified that he learned that Mr. Doheny, Jr., required a certain amount and would come in and get it later in the day, the amount being \$100,000. Thereupon, over the objections of the defendants based on the ground that the evidence was immaterial and incompetent, irrelevant to any issues in the case, and not admissible against the corporate defendants or either of them, but related to matters with which neither nor both of said defendants were connected, and under exception duly reserved to the ruling of the Court overruling said objection, [103—30] the witness Youngs testified that Mr. Doheny, Sr., and also Mr. Doheny, Jr., had accounts at his bank at that time; that when he received the information that Doheny, Jr., would want \$100,000 he procured it from the First National Bank of New York where Blair &

(Testimony of Graham Youngs.)

Co. kept current funds upon Blair & Co.'s check dated November 30, 1921, for the sum of \$100,000, cashed that date, drawn on the First National Bank of the City of New York, which check was offered in evidence, to which offer defendants objected on the ground that a document representing an inter-bank transaction between two New York banking-houses, not shown to be in any way connected with any transaction of the corporate defendants, was incompetent as against them and irrelevant to any issues in this case, which said objection was disposed of as follows: "The Court: I presume it will be connected up. Mr. Pomerene: Yes, it will be. The Court: The objection is overruled." To which ruling of the Court defendants duly noted an exception. Said check was received as Plaintiff's Exhibit No. 35. Over the objections and exceptions as already stated witness continued that later on the same day he saw Mr. Doheny, Jr., at the office of Blair & Co. where he delivered to Mr. Doheny, Jr., the sum of \$100,000 in currency the denominations of which he does not remember but which he would say were large; this delivery was made in the conference room, immediately adjoining the main office; Mr. Doheny verified the amount, which was delivered in a package about four inches thick by the width and length of the bills, which package witness believes Mr. Doheny put in a small satchel; this occurred about 2 o'clock in the afternoon; no one accompanied Mr. Doheny who, after receiving

(Testimony of Graham Youngs.)

the money, left the bank; there was no talk between witness and Doheny, Jr., regarding this transaction.

Cross-examination.

With the stipulation, approved by the Court, that the objections made to the foregoing testimony of the witness Youngs were not waived by cross-examination, the witness on cross-examination testified that at the time referred to in his direct, November 30, 1921, there was a personal banking deposit account kept with Blair & Co. by and in the name of Mr. and/or Mrs. E. L. Doheny, Sr., against which either had the right to check and in which they periodically made deposits, and there was also a personal deposit and checking account in the name of Mr. and/or Mrs. E. L. Doheny, Jr.; that about 2 o'clock in the afternoon of November 30, 1921, Mr. Doheny, Jr., at the banking-house of Blair & Co. presented a check drawn on the latter account, which was a personal bank [104—31] account, for \$100,000, which sum he received in currency, put in a receptacle, and left the bank.

Testimony of Charles L. Little, for Plaintiff.

Thereupon CHARLES L. LITTLE, was called as a witness on behalf of plaintiff and over objections, and under exceptions, the same as those interposed and allowed as regards the testimony of the witness Youngs (except as to the objection on the ground of hearsay), the said Little testified that he is, and in November 1921 was, assistant paying

(Testimony of Charles L. Little.)

teller of Blair & Co. in New York; that he knows E. L. Doheny, Sr., and Jr., by sight; that they have and in November, 1921, had bank accounts with Blair & Co. the ledger sheets of which the witness produced; that the account of Mr. and Mrs. E. L. Doheny, Sr., either one or both, on November 29, 1921, had a balance of \$8,633.72; that on the same day the account of Mr. and Mrs. E. L. Doheny, Jr., either one or both, had a balance of \$111,011.65; that several checks were drawn against this last-mentioned account on November 29th and 30th, one on the latter date being for \$100,000; that on December 5th the balance to the credit of the Doheny, Jr., account was \$7367.61; to which credit there was deposited December 6, 1921, \$40,000, the proceeds of check of E. L. Doheny on Security Trust & Savings Bank, Los Angeles, California; that on January 23, 1922, there was credited to that account the sum of \$116,002.29, the proceeds of two checks of E. L. Doheny on Security Trust & Savings Bank, Los Angeles, one for \$60,000 and one for \$56,002.29; these last referred to checks were transmitted to Blair & Co. by a letter dated January 11, 1922, Plaintiff's Exhibit No. 38, which plaintiff's counsel requested be copied into the record in its entirety, including the letterhead, and which is as follows:

PLAINTIFF'S EXHIBIT No. 38.

"PAN AMERICAN PETROLEUM & TRANS-
PORT COMPANY.

Security Building.
Los Angeles, California.

Edward L. Doheny, President.	General Offices:
J. M. Danziger, Vice-President.	Security Building,
Herbert G. Wylie, Vice-President.	Los Angeles.
Charles E. Harwood, Vice-President.	
J. S. Wood, Vice-President.	Other Offices:
P. H. Harwood, Vice-President.	New York.
Norman Bridge, Vice-President.	New Orleans.
Edward L. Doheny, Jr., Vice-Pres. & Treas. Tampico.	
Oscar D. Bennett, Secretary.	
A. R. Pointer, Comptroller.	

Office of the Secretary. Jan. 11, 1922.
Blair & Company,
24 Broad Street,
New York City. [105—32]

Gentlemen:

We hand you herewith two checks drawn by Mr. E. L. Doheny on the Security Trust & Savings Bank, of Los Angeles, in favor of E. L. Doheny, Jr.,—the one for \$60,000.00 and the other for \$56,002.29, duly endorsed, which kindly place on deposit with yourselves to the credit of 'Mr. and/or Mrs. E. L. Doheny, Jr.' advising me when so done.

Yours very truly,

O. D. BENNETT."

(Testimony of Charles L. Little.)

As Plaintiff's Exhibits 36 and 37 there were received credit memos showing the deposits in the Doheny, Jr., account with Blair & Co. made December 6, 1921, and January 23, 1922, as testified to by the witness above. On cross-examination witness testified that the ledger sheets produced by him showed that in the said Doheny, Jr., account, in addition to the deposit testified to by him other deposits were made, as follows: July 11, 1921, \$6,166; July 14, 1921, \$16,666.60; October 11, 1921, \$17,500.50; October 29, 1921, \$395,333.30; that the balance to the credit of that account October 31, 1921, was \$488,556.60; that there was withdrawn November 2, 1921, the sum of \$362,000, leaving a balance of \$121,751.17; that from December 1, 1921, to and including January 23, 1922, there was credited to the said Doheny, Jr., account by check from Doheny, Sr., a total of \$156,002.29; June 23, 1922, the sum of \$75,000, a collection item, that is, something drawn on an out-of-town bank, was credited to the said Doheny, Jr., account; none of the entries about which witness has testified on direct or cross was made by him nor has he any knowledge of them but simply speaks from what he finds in the books, which are records kept in the regular course of business and under his supervision.

Testimony of Ernest K. Hill, for Plaintiff.

ERNEST K. HILL, a witness called by plaintiff, testified that on February 1, 1924, he was acting

(Testimony of Ernest K. Hill.)

clerk of the public lands committee of the United States Senate and that at a session of that committee on that date Mr. E. L. Doheny produced a paper which was marked by the official reporter and given by the witness into the possession of the clerk of the Senate for safekeeping, which paper witness produced.

Testimony of Theodore Mack, for Plaintiff.

THEODORE MACK, a witness for plaintiff, testified that he is, and during 1921 was, employed as principal clerk and stenographer in the immediate office of the Secretary of the Interior and served in that capacity when Albert B. Fall was Secretary of the Interior; he is familiar with Mr. Fall's handwriting and identifies the paper produced by the witness Hill as [106—33] being in that handwriting. Witness also identifies Interior Department travel voucher, signed by Albert B. Fall, as in his handwriting, hereinafter referred to as Exhibit 40.

Thereupon there was offered in evidence paper produced by the witness Hill the handwriting of which was identified by witness Mack and, the same having been submitted for the examination of Court and counsel for defendants, its admission in evidence was objected to by defendants on the ground that it is incompetent, irrelevant and immaterial to any issues of the case and not connected up in any way with those issues or with the defendants or either of them; on statement of

(Testimony of Theodore Mack.)

plaintiff's counsel to the Court that they undertook to thereafter connect said paper with the issues and defendants, the objection was overruled by the Court, to which action exception was duly reserved, the Court also ordering that the right be reserved to the defendants to thereafter present a motion to strike said documentary evidence from the record. Said paper was thereupon, over said objection, subject to said exception and to said reserved right to move to strike, received in evidence as Plaintiff's Exhibit No. 39, and is in the words and figures following:

PLAINTIFF'S EXHIBIT No. 39.

"\$100,000 Washington, D. C., Nov. 30, 1921.

On demand after date I promise to pay to the order of E. L. Doheny One hundred thousand and no/100 Dollars at New York City or Los Angeles, Calif. Value received with interest at — per cent."

Said paper was on a printed promissory note form and was without signature, the lower right-hand corner of the same, containing a place on the form for signature, having been torn therefrom.

Plaintiff thereupon offered in evidence and there was received as Exhibit 40 travel voucher with the signature of Albert B. Fall, as identified by the witness Mack, said document being offered and received for the limited purpose of showing that it was certified over Secretary Fall's signature that he left Washington December 1, 1921, A. M., pro-

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(Testimony of Theodore Mack.)

ceeded from Washington, D. C., to El Paso, Texas, and arrived again at Washington January 27, 1922, A. M., which facts are stated on the face of said voucher. Said exhibit, prior to being received in evidence, was objected to by defendants on the ground that it is not in any way connected up with or brought home to the defendants in this case, or either of them, and is incompetent, irrelevant and immaterial. The [107—34] objection was overruled and the exhibit was admitted for the limited purpose above stated, to which ruling and action of the Court defendants duly excepted.

Testimony of J. E. Benton, for Plaintiff.

J. E. BENTON, a witness on behalf of the plaintiff, testified that he is vice-president and cashier, First National Bank, El Paso, Texas, and produced ledger sheets of checking account of Albert B. Fall with that bank; thereupon the following testimony was given by the witness after objections thereto had been made by defendants on the ground that the said testimony, and each and every part thereof, was irrelevant, to any of the issues in this case, incompetent as against the corporate defendants, that in so far as it related to the private bank account or private transaction of the said Albert B. Fall, not brought home to and not connected with the business transactions of, the corporate defendants, the said testimony was utterly irrelevant and immaterial to the issues; that furthermore, irrespective of what the entries in the bank account of Mr. Fall

(Testimony of J. E. Benton.)

had shown, unless the same were directly and specifically shown to relate to money charged to have been received for, on account of, or in connection with, the transaction which was the subject of this suit, or some part thereof, testimony regarding the same was entirely inadmissible and no inference relating to this case would be properly drawn from such testimony; that testimony is as to these defendants hearsay; that no proper foundation for the receipt of said testimony had been laid. These objections, on all the grounds stated, were made as to all of the testimony regarding the bank account of A. B. Fall, and objections on the same ground, specifically made and called to the Court's attention, were presented as to testimony relating to actions of C. C. Chase. The Court overruled each of defendants' objections, and admitted the testimony set forth in the next succeeding paragraph, to which action and ruling of the Court defendants duly noted exceptions. The court further allowed defendants to reserve the right to move hereafter, at the close of the evidence in the case, to strike said testimony from the record.

The witness Benton testified that on December 7, 1921, C. C. Chase, son-in-law to Albert B. Fall, made a deposit to Fall's credit of \$7500 in currency. Slip showing said deposit was received in evidence as Plaintiff's Exhibit No. 41; the balance on October 26, 1921, which is the date preceding the date of that deposit, was \$665.72; the last prior deposits were, in 1920: March [108—35] 4, \$1680.22;

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(Testimony of J. E. Benton.)

March 5, \$2500; March 25, \$4000; April 8, \$250; April 17, \$20,000; deposits subsequent to December 7, 1921, were made in 1922, as follows: June 1, \$2209; October 1, \$5085.25; November 22, \$15,150.

Testimony of Will Ed Harris, for Plaintiff.

WILL ED HARRIS, a witness on behalf of the plaintiff, testified that he resides in Carrizozo, New Mexico; he is acquainted with Albert B. Fall and met him at Three Rivers, N. M., December 4, 1921, and again met him in the office of C. C. Chase, El Paso, Texas, December 5, 1921, where a paper was drawn up and signed by witness and Fall, which paper witness was subpoenaed to produce but had not been able to find and therefore did not produce. To the question what was the paper defendants objected on the ground that neither that paper nor its contents, nor the transaction of which it was a part, was competent evidence against these defendants, and the same was irrelevant to any issues in the case, and constituted hearsay, and that no proper foundation had been laid for the introduction thereof in evidence; the evidence was not objected to on the ground that foundation for secondary evidence of the contents of a paper the original of which was not produced had not been laid. The Court overruled the objection of the defendants and defendants duly reserved an exception. Thereupon the witness testified that the paper was a contract for the sale to Mr. Fall of the Harris Ranch located at Three Rivers, N. M., adjoining a ranch

(Testimony of Will Ed Harris.)

theretofore owned by Mr. Fall on the east; that under that contract land and cattle were sold for a total price of \$91,500 on account of which on said date Mr. Fall paid the sum of \$10,000 in \$100 bills, in two packages, \$5000 each, which he took from a little handbag. Each package was bound with a small strip of paper and witness does not remember anything indicating any name on these paper binders; witness deposited the money in the First National Bank of El Paso. December 28, 1921, Fall made two further payments on account of said purchase by cashiers check on the State National Bank of El Paso, one to the order of witness in the sum of \$16,000 and one to the order of A. D. Brownfield in the sum of \$29,000, which checks were offered in evidence as Exhibits 42 and 43. Early in January, 1922, Fall made a further payment on account of said purchase of \$20,000 by check and later in the same month a still further payment of \$13,500 by check, which left a balance of \$3000 which was not paid until some time later. A. D. Brownfield is witness' brother-in-law and a partner with witness in the transaction. [109—36]

All of the foregoing testimony of the witness Harris was received after objections of the defendants thereto (on grounds substantially as hereinbefore set forth that the testimony regarding personal transactions of Mr. Fall or other persons was not brought home to the defendants) were overruled by the Court and exceptions had been duly reserved by the defendants.

Testimony of George D. Flory, for Plaintiff.

GEORGE D. FLORY testified (over similar objections and the additional objection that accounts of C. C. Chase, or of a person named Chase, or of the firm of Fall and Chase, are, for the reasons hereinbefore stated, irrelevant, inadmissible and incompetent, which objections were overruled by the Court and exceptions duly reserved by defendants) that he was vice-president of the State National Bank at El Paso, Texas; that that bank had no account with Albert B. Fall but had one in the name of C. C. Chase and one in the name of Fall and Chase; the Chase named in both of these accounts is son-in-law to Albert B. Fall; on December 7, 1921, there was deposited in the account of C. C. Chase the sum of \$13,500 in currency, a deposit slip in the said Chase's handwriting being read in evidence as Exhibit 44; on December 28, 1921, an account in the name of Fall and Chase was opened with an initial deposit of \$36,200, of which \$22,700 was in currency and \$13,500 was transferred from the C. C. Chase account. Deposit slip covering this deposit was introduced as Exhibit No. 45; December 28, 1921, witness' bank issued Cashiers check for \$29,000 to the order of A. D. Brownfield, which was not charged against anybody's account but was purchased for cash, and on the same date a Cashiers check to the order of Will Ed Harris for \$16,000 was purchased; the account of Fall and Chase shows that subsequent to December 28th there was

(Testimony of George D. Flory.)

debited to it on January 6, 1922, a check drawn for \$20,000 and on January 21, 1922, a check drawn for \$13,500.

Cross-examination.

On cross-examination witness stated that the account of Fall and Chase was carried like the account of a firm in that name and that either Albert B. Fall or C. C. Chase had a right to draw checks against that account; that checks drawn thereon by C. C. Chase were honored at the bank; that subsequent to the time covered by the direct examination the account shows withdrawals dated March 3, 1922, of \$500; May 6th of \$1374.80; and May 13th, \$235.08, leaving a balance of \$590.12 which is the state of the account now, the same [110—37] being unclosed.

Testimony of W. J. McInness, for Plaintiff.

W. J. McINNESS, a witness on behalf of plaintiff, testified (under objections and exceptions on grounds substantially the same as those stated with respect to the previous witness) that he is receiver of the Citizens National Bank of Roswell, New Mexico, and that prior to December 1, 1921, was cashier thereof; under subpoena he produces the ledger of the account of Harris and Brownfield with his bank which was opened on December 6, 1921, with a deposit of \$10,000 transmitted from the First National Bank of El Paso, Texas; that witness' bank also had an account in the name of

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(Testimony of W. J. McInness.)

Will Ed Harris, Executor, in which there was deposited December 30, 1921, the sum of \$23,000, the deposit slip, Exhibit 46, reading:

PLAINTIFF'S EXHIBIT No. 46.

"Deposited by Will Ed Harris. Roswell, New Mexico.

	Dec. 30, 1921.	
	Dollars	Cents
Fall	23000	00

On the same day \$22,000 was deposited to the credit of Brownfield; January 4, 1922, there was deposited in the Will Ed Harris account the sum of \$20,000, the deposit slip being read as Exhibit 47; January 19, 1922, the sum of \$13,500 was deposited in the Harris account; the Brownfield account is in the name of A. D. Brownfield and Mrs. Brownfield and in it \$22,000 was deposited as shown by the ledger and by deposit slip (Exhibit 48) December 30, 1921, this deposit being part of a total of \$45,000 received by the bank, \$23,000 of which, as already testified, was credited to the Will Ed Harris account.

Testimony of A. D. Brownfield, for Plaintiff.

A. D. BROWNFIELD, a witness on behalf plaintiff, testified (over substantially the same objections and under the same rulings and exceptions reserved as above set forth regarding the four previous witnesses) that he is a brother-in-law of the witness Harris and was present in El Paso on December 15, 1921,

(Testimony of A. D. Brownfield.)

at the time of the transaction testified to by Harris, which testimony he corroborated; witness met Mr. Fall at the railroad station in Three Rivers, on Train No. 3 which was westbound from Chicago to San Diego via El Paso; the Cashiers checks, the subject of the testimony above, were delivered in the presence of witness at the home of Mr. Fall in Three Rivers.

Testimony of Carrie Estelle Doheny, for Plaintiff.

CARRIE ESTELLE DOHENY, a witness on behalf of the plaintiff, was called and having testified that she is the wife of E. L. Doheny, Sr., residing in Los Angeles, and was with her husband in New York City in November and December [111—38] 1921, where they at that time had an apartment, and that she made a trip with her husband from New York to Los Angeles in December of that year, she was then asked regarding a paper shown her by her husband, and thereupon, the husband of the witness in open court having waived this witness' incompetency, if the same exists, under the provisions of Section 1881 of the Code of Civil Procedure of the State of California, as made applicable to trials in Federal courts by Section 858, R. S. U. S., and the Court having overruled defendants' objection to the competency, relevancy, materiality and admissibility of the testimony of the witness upon grounds substantially as stated as regards the testimony of five previous witnesses, to which rulings exceptions were duly reserved by

180 *Pan American Petroleum Company et al.*

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Testimony of A. D. Brownfield, for Plaintiff.

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(Testimony of A. D. Brownfield.)

at the time of the transaction testified to by Harris, which testimony he corroborated; witness met Mr. Fall at the railroad station in Three Rivers, on Train No. 3 which was westbound from Chicago to San Diego via El Paso; the Cashiers checks, the subject of the testimony above, were delivered in the presence of witness at the home of Mr. Fall in Three Rivers.

Testimony of Carrie Estelle Doheny, for Plaintiff.

CARRIE ESTELLE DOHENY, a witness on behalf of the plaintiff, was called and having testified that she is the wife of E. L. Doheny, Sr., residing in Los Angeles, and was with her husband in New York City in November and December [111—38] 1921, where they at that time had an apartment, and that she made a trip with her husband from New York to Los Angeles in December of that year, she was then asked regarding a paper shown her by her husband, and thereupon, the husband of the witness in open court having waived this witness' incompetency, if the same exists, under the provisions of Section 1881 of the Code of Civil Procedure of the State of California, as made applicable to trials in Federal courts by Section 858, R. S. U. S., and the Court having overruled defendants' objection to the competency, relevancy, materiality and admissibility of the testimony of the witness upon grounds substantially as stated as regards the testimony of five previous witnesses, to which rulings exceptions were duly reserved by

(Testimony of Carrie Estelle Doheny.)

defendants, the witness testified that on December 20, 1921, in the apartment occupied by her husband and herself in New York, her husband showed her Plaintiff's Exhibit 39, which was not then in the condition it is in now as it then had the signature of Albert B. Fall on it; she is not familiar with his signature but testifies that the name signed to the note was A. B. Fall; that that signature was torn from the note by her husband prior to their leaving the hotel for the station, the only persons then present being witness and her husband; the signature was then given to witness by her husband and is now in court in the possession of one of defendants' counsel; that after arrival in Los Angeles witness placed the signature in a safe deposit box in the Security Trust & Savings Bank in that city where it remained from a day or two after Christmas, 1921, until April 30, 1924; the last time she saw the signature was last night; it has been in her possession all the while until she delivered it to counsel; that she first learned about the note (Exhibit 39) in a conversation with her husband regarding it the day they left New York in December, 1921, at which time he said "I have made Mr. Fall this loan of \$100,000, and 'if on our way home anything should happen that you and I would be killed in a wreck and our executors found this note and would present it and press him for it, he would be worse off now than he was before I loaned him this money.'" Her husband then looked at the note and said "In case such

(Testimony of Carrie Estelle Doheny.)

a thing happens, I will just take the signature off, and I will keep the note and you keep the signature, and if we are killed the note will be found on me and the signature on you." [112—39]

Cross-examination.

On cross-examination the witness testified that she has been the wife of E. L. Doheny, Sr., for nearly twenty-five years; that they reside in Los Angeles, had rooms in the Plaza Hotel, New York City, in which city her husband had an office; that it was their custom to come back home to Los Angeles for the Christmas holidays and that about December 20, 1921, she was first shown Exhibit 39, which then had the signature on it, and which her husband took from his pocket and showed to her, saying in substance: "I loaned my friend Mr. Fall \$100,000 and I have his promissory note for it. We are about to start home, and there is always a chance of some disaster overtaking us; this was a loan to help Mr. Fall out of financial difficulties, and if we should be killed en route home and this note is found complete this way it would be the duty of my executor or our executors to enforce it according to its terms against Mr. Fall. As he borrowed this money to purchase a ranch at this time, if this note was enforced immediately against him he would be in a worse position financially and personally than he was before I made the loan. And therefore I am going to put this in two parts, I am going to take the signature off," which he thereupon did in the

(Testimony of Carrie Estelle Doheny.)

witness' presence and handed it to her, telling her to take care of it, saying, in substance, "If it is found this way if anything happens to us it will be Ned and the members of the family who will have possession of our personal effects and Ned will understand it." Her husband further said to her that he wanted her to take care of this signature carefully so that the whole note could be put together again when Mr. Fall was able to pay it, and he told her to take care of it until such time as he called for it and put the two parts together; she put the piece of the note on which the signature was in a bag or jewelry box that she carried and after Christmas in 1921 she put it with other securities and valuable papers in a safety deposit box in the name of her husband and herself in Los Angeles where it remained from that time until April 30, 1924. In January, 1924, her husband asked her to get this signature for him and at that time she was not sure just where she had placed it and she looked in places where she kept valuables at home and also made an examination of the contents of her safety deposit box and did not at that time find it; she was then in a hurry to go east, and did go east, and while there she looked in her safety deposit box in New York, [113—40] thinking she would find the signature there; failing in that and having returned to Los Angeles about the middle of March 1924, she went to the above-mentioned Los Angeles safety deposit box on April 30, 1924,

(Testimony of Carrie Estelle Doheny.)

accompanied by Judge Charles Wellborn, one of counsel, and found the signature in a small envelope held to a package of bonds by a rubber band, from which place she took it to be kept in her possession until she personally delivered it to defendants counsel; she does not know the handwriting of Albert B. Fall, never saw him write and cannot identify the handwriting of the paper as his.

Thereupon paper identified by the witness was offered in evidence by plaintiff and marked Defendants' Exhibit "E."

Testimony of E. L. Doheny, Jr., for Plaintiff.

E. L. DOHENY, Jr. was thereupon called as a witness by plaintiff and having testified that he is the son of E. J. Doheny, Sr., and lives in Los Angeles, he was asked: "Were you in New York in the latter part of November and early in December, 1921?" to which question he responded, addressing the Court: "Your Honor, as your Honor knows, there are pending in Washington indictments against me in connection with the very transactions which are now before you. Those indictments are entirely unfounded. Nevertheless, until they are disposed of I must decline to testify regarding those transactions on the ground that if I testify
√ that testimony may tend to incriminate me. I stand upon my constitutional rights under the Constitution of the United States."

Thereupon the following occurred: "The Court: I think there are matters that probably may come within the constitutional rights of the witness, and

(Testimony of E. L. Doheny, Jr.)

while there is nothing in the record to indicate the nature of the charges I am inclined to require the Government to produce evidence to justify the presentation of this witness and the requirement of his testimony.

“Mr. POMERENE.—If the Court please, it is true that there is pending in the Supreme Court of the District of Columbia an indictment charging this witness, with others, with the criminal offense of conspiracy to defraud, and there is also a further indictment charging him and E. L. Doheny, Sr., with the criminal offense of giving a bribe, I think that frankly states the situation so far as the criminal proceedings are concerned.

“Mr. HOGAN.—The charge of conspiracy relates to the same facts.

“Mr. POMERENE.—Oh, yes; the charge of conspiracy contained in [114—41] that indictment relates to the same state of facts which are contained in the bill of complaint now pending before your Honor. We recognize fully the constitutional privilege if it is claimed in good faith. I think that is the only question, and I am perfectly frank in stating that to your Honor. I think that is the only question your Honor has to pass upon.

“The COURT.—It is conceded by the Government that the witness is about to be interrogated concerning matters which are necessarily contained within the allegations of an indictment pending in the Supreme Court of the District of Columbia. I feel, unless the Government has some authority to

(Testimony of E. L. Doheny, Jr.)

substantiate its position, that the mere assertion of the right to the protection is sufficient to guarantee to the witness the constitutional protection sought."

The witness was then asked whether he was an officer or stockholder of the Pan American Petroleum & Transport Company or the Pan American Petroleum Company, and having responded that he stood upon his constitutional rights and referred to his previous statement to the Court, was excused.

Testimony of E. L. Doheny, Sr., for Plaintiff.

E. L. DOHENY, Sr., was then called as a witness by plaintiff and testified that he is an officer and stockholder in the Pan American Petroleum & Transport Company, being Chairman of the Board of Directors; that in Nov. and December, 1921, he was President of that Company; that he has been a stockholder for a good many years. Counsel for the plaintiff then handed to the witness Plaintiff's Exhibit 39 and asked him to state whether the same came into his possession and if so under what circumstances, and in response the witness addressed the Court as follows:

"May it please your Honor, since this case was filed two indictments have been filed against me personally in the District Court of the District of Columbia charging offenses based upon the exact transactions which are involved in this suit. These indictments are now pending. I desired to meet the charges at Washington before this case was

(Testimony of E. L. Doheny, Sr.)

tried, but counsel for the Government objected and it was decided otherwise. In view of the pendency of these indictments, and although I assert that I am not conscious of having violated any law or transgressed any moral principle, and that I am confident of being vindicated when I get my day in court in Washington, upon the advice [115—42] of counsel I decline to testify in this case, on the ground that any evidence I may give as to the transaction here involved may be used against me at Washington and might tend to incriminate me. I have been advised by my counsel that the Constitution of the United States will prohibit the attorneys for the Government from doing in the trial at Washington what has been done here today, namely, calling me to the witness-stand, and that my being called here by the attorneys for the Government is an attempt to violate my constitutional rights and to do by indirection that which the highest law of this country would not permit to be done directly."

The witness having, in response to a question by the Court, stated that aside from the advice of counsel he asserted his constitutional rights, and counsel for the Government having stated that the situation as to this witness was the same as with respect to the previous one, the witness was excused from testifying.

There was presented to the Court a stipulation duly entered into between counsel for plaintiff and defendants by which it was agreed, *inter alia*, that

(Testimony of E. L. Doheny, Sr.)

should any of the testimony given by witnesses before the Committee on Public Lands and Surveys, United States, Sixty-Eighth Congress, First Session, at hearings contained in officially printed reports conducted by that committee. "be admissible as evidence on behalf of any party to this cause, on any ground, said reports may be used as evidence of such testimony, with the same force and effect, but no other, as if the said reporters or any person who heard the said testimony before the Senate Committee had been called and sworn as witnesses in this cause, and had testified to the accuracy of the transcript of such testimony as contained in said printed record." Counsel for the Government producing said report, the authenticity of which was conceded by counsel for the defendants, offered to show thereby that Mr. E. L. Doheny voluntarily appeared before the committee on January 24, 1924, and made a statement and proposition to the committee; and that in his presence and by his consent Mr. Gavin McNabb, his attorney, made a statement to the committee proffering certain things to the United States and proposing certain action in certain events to be taken by the defendant Pan American Petroleum & Transport Company, and that in connection with that statement and that proffer Mr. Doheny made certain statements to the committee touching that transaction which has been the subject of testimony already received by the Court; the counsel for the plaintiff stated he proposed to offer as admissions binding said defendant [116—

(Testimony of E. L. Doheny, Sr.)

43] under the circumstances in which they were made by Mr. Doheny as an officer of the defendant. To said evidence counsel for the defendants objected on the ground that so far as plaintiff offers to read in evidence as an admission the testimony of Edward L. Doheny before a Senate committee of the United States on January 24, 1924, it is hearsay as to these defendants; the alleged admissions are not shown to have been made as any part of the transactions of the corporate defendants, or either of them, at that time; they are no part of the *res gestae* of any corporate transaction; they are the individual statements made by an individual himself; there is no testimony in this record showing that Edward L. Doheny at that time had any express or implied authority to appear before the Senate Committee, and, speaking for the corporation, to make any statement, admission, or otherwise; there is no testimony in this record as regards any official position held by Mr. Doheny from which it could be implied that the making of statements by him before a Senate committee was within the scope of the authority which such official position carried with it; that statements made by an officer of the corporation, or any agent or employee of the corporation, not part of the *res gestae* of a corporate transaction, accompanying it and being contemporaneous with it, but being mere narrative of past events and actions in the past, are inadmissible. Defendants further objected to the evidence offered in so far as it involved the proposal

(Testimony of E. L. Doheny, Sr.)

to put in evidence in this case an offer or tender made by an attorney acting for Mr. Doheny, personally, as stated in the plaintiff's proffer, on the ground above stated, which are repeated, and the further objection was made that evidence of an offer of settlement or compromise, if the said offer which it was proposed to put in evidence may be regarded as one from the defendants to the plaintiff, is incompetent and inadvisable; the offer which plaintiff's counsel refers to was not only the individual action of Mr. Doheny, not then and not now binding upon the corporate defendants, nor admissible against them or either of them, but in addition its reception in evidence would be violative of the settled rule of law that unaccepted offers of compromise are never to be received against even those who make them. Thereupon the Court heard arguments on the questions thus preseted by plaintiff's proffer and defendants' objection, and upon the conclusion thereof orally rendered the following opinion: [117—44]

"The COURT.— * * * It seems to me the question is whether, at the time it is claimed these declarations were made, the declarant was acting within the scope of his authority as an agent of the defendant corporation. Among the authorities that have been called to the Court's attention in the argument is the one in 119 U.S., and it is my conviction from a previous reading of it that that portion of the opinion from which the excerpt

(Testimony of E. L. Doheny, Sr.)

is taken was in the nature of obiter dictum. The other two authorities which have been cited seem to hold to the contrary. No discussion was had of the Federal case which was cited, and which I think is quite illuminating, wherein a fire commissioner, some time after an event, had made statements concerning the quality of the fire-hose that had been purchased and for which an action was being prosecuted to recover the purchase price. The Supreme Court of the United States in that case expressly held that declarations of one of the fire commissioners was a proper declaration against the interest of the municipal body, of which he was an official and as to which he was the managing agent. Now I think that in this matter the Court cannot ignore the record that is thus far made, and the stipulation—I am not speaking entirely from the evidence that has been elicited from the stand and from the documentary proof submitted but also from the stipulation of counsel—that the leases in question were negotiated on behalf of the defendant companies by Mr. Doheny, Sr., that he was the agent of these bodies that had to do with the negotiations and with the culmination of these negotiations in which the agreements became binding contracts upon the parties thereto. The subject matter of the investigation before the Senate Committee of Congress was the very matters as to which Mr. Doheny, Sr., had been the agent of the defendant companies. The subject matter of the inquiry was the execution and making of those

(Testimony of E. L. Doheny, Sr.)

contracts. There were other questions subsidiary thereto, but in so far as these defendants are concerned, and in so far as the appearance of any of the persons connected officially with these defendants at that investigation is concerned, the subject matter of the investigation was the contracts which are now under consideration here. The proof shows that most, if not all, of the transactions [118—45] leading up to the execution of these leases by the defendant corporations were, as I have said before, carried on, or at least in large part carried on, by Mr. Doheny, Sr. I think the only question is whether, under that state of facts, the declaration made by Mr. Doheny, Sr., in reference to the matters involved in the contracts under consideration was and can be said to be within the *res gestae* of the subject matter of his suit. I am inclined to think that it is. The corporate body could act only through its human agencies, its human instrumentalities. It is true that it is a legal entity functioning *sui juris*, but functioning only through the human agencies that make up its management, and therefore whenever one of those agencies acts within the apparent scope of his authority and makes a statement concerning a matter with which the record shows him to have been a dominant factor, I think under these Federal decisions that have been cited that that is a proper matter to be introduced in a case wherein the property right of the corporate body is in issue.

(Testimony of E. L. Doheny, Sr.)

I think these cases involving torts are clearly distinguishable, especially those that establish the rule that declarations of engineers or trainmen made some time after an occurrence which results in an action for personal injury are not admissible. I think the better reasoned authorities, even in my own State, upon that subject, are to the effect that if the declaration is made simultaneously with the occurrence that is the subject matter of the investigation, then the rule that the spontaneous expression of opinion upon the part of an actor whose act is in question has some solemnity. That is the reason why courts have held that such expressions are part of the *res gestae* and are properly introducible against the corporate body. Now the same thing is true in principle in so far as the question here is concerned, and that question may be summarized and stated succinctly as follows: Was the declarant who appeared before the senatorial investigation committee acting within the apparent scope of his authority as an officer, an agent, of these defendant companies or of one of them? As I say, the evidence already in the record indicates that it was he who undertook to consummate the contracts for the companies, and it was he more than any other agency of the corporate body who would know the facts relative [119—46] to the making of these contracts, and that it was the making of the contracts that was the very matter under consideration and investiga-

(Testimony of E. L. Doheny, Sr.)

tion by the senatorial body that the declarant is alleged to have appeared before.

I think that brings it within the rule of res gestae and under the rule of these Federal decisions which have been cited.

For those reasons that * * * if the foundation as to the medium of proof is not in question here I am inclined to feel at this time that this evidence is admissible as against the defendants, and * * * the objection will be overruled." [120—47]

It was thereupon stipulated that no objection was made as to the medium or vehicle of proof, that counsel for the parties agreed that if the proffered evidence was admissible the official report of the Senate Hearings which counsel for the Government offered to use for the introduction of that evidence here could be accepted with the same force and effect as if verified by the testimony on the witness-stand of the reporters who made the same.

Thereupon the Court overruled the above-stated objection of the defendants and admitted so much of the report of the aforementioned Senate Hearings as is quoted below in evidence, to which ruling and action of the Court defendants duly noted an exception.

Thereupon counsel for the plaintiff having stated to the Court that there would be read from the record of the Hearings before the said Senate Committee the matter therein contained "touching the transaction of the \$100,000 matter," and the Court

(Testimony of E. L. Doheny, Sr.)

having been in substance informed as regards the contents of said record, the defendants by their counsel objected to the introduction thereof in evidence on the ground, in addition to those heretofore stated, that the subject matter was irrelevant to the issues in this case, and repeated all the grounds of the several objections heretofore made to there being received against the corporate defendants testimony relating to the \$100,000 transaction" between E. L. Doheny and A. B. Fall, and it was agreed by counsel for the plaintiff, with the approval of the Court, that it was understood that to each and every part of the proffered evidence the objections of the defendants on all of the grounds heretofore made known to the Court applied; but the Court overruled said objections and ordered said evidence admitted, to which ruling and action of the Court the defendants duly reserved exceptions.

There was thereupon read to the Court from two parts of the official report of said Hearings (which were marked Exhibits 49 and 50) the following: [121—48]

PLAINTIFF'S EXHIBIT Nos. 49-50.

"Hearings Before the Committee on Public Lands and Surveys, United States Senate, 67th Congress, Fourth Session, Pursuant to Senate Resolutions 282, 294 and 434 Providing for an Investigation on the Subject of Leases upon Naval Oil Reserves.

Thursday, January 24, 1924.

United States Senate, Committee on Public Lands and Surveys, Washington, D. C.

The committee met, pursuant to call of the chairman, at 2 o'clock P. M., in Room 210 Senate Building, Hon. Irvine L. Lenroot presiding.

Present.—Senators Lenroot (chairman), Smoot Ladd, Stanfield, Norbeck, Bursum, Cameron, Walsh of Montana, Adams, Dill, and Pittman. (Since that time Ladd has died, Bursum, Adams and Pittman have been defeated.)

The CHAIRMAN.—The committee will come to order.

Senator WALSH of Montana.—Mr. Chairman, I asked the committee to meet this afternoon because I was informed that Mr. Doheny desired to come before the committee to make a statement. If he is present we would like to have him now.

The CHAIRMAN.—Will Mr. Doheny please come around if he is in the room?

Mr. DOHENY.—All right.

Senator WALSH of Montana.—Were you sworn when you were here before, Mr. Doheny?

Mr. DOHENY.—Yes, sir. Do you wish me to proceed?

Senator WALSH of Montana.—We understood that you had a statement to make, and we would be very glad to hear you.

Mr. DOHENY.—Mr. Chairman, I have a statement I wish to make to the committee, and in order to have it intelligible and to have my mind clear as

to the order in which I present it I have reduced it to writing, and, with your permission, I will read it to the committee.

The CHAIRMAN.—Very well, you may do so.
[122—49]

“Mr. DOHENY.—I have been following the reports of the proceedings before your committee and have concluded that notwithstanding my authorization to ex-Secretary Fall early in December to state the full and complete facts in connection with a personal transaction had in 1921 between Mr. Fall and myself, Mr. Fall has been making an effort to keep my name out of the discussions for the reason that a full statement might be misunderstood. Whether there is a possibility of such misunderstanding or not, I wish to state to the committee and to the public the full facts, and I may say here that I regret that when I was before your committee I did not tell you what I am now telling you. I did not do so for the reason that such statement was not pertinent in answer to any of the questions asked me by the members of the committee, and to have done so would have been volunteering something in no way connected with the contracts made with the Pan American Petroleum & Transport Company. When asked by your chairman whether Mr. Fall had profited by the contract, directly or indirectly, I answered in the negative. That answer I now reiterate.

I wish first to inform the committee that on the 30th day of November, 1921, I loaned to Albert B.

Fall \$100,000 upon his promissory note to enable him to purchase a ranch in New Mexico. This sum was loaned to Mr. Fall by me personally. It was my own money and did not belong in whole or in part to any oil company with which I am or have been connected. In connection with this loan there was no discussion between Mr. Fall and myself as to any contract whatever. This loan had no relation to any of the subsequent transactions. The transactions themselves, in the order in which they occurred, dispose of any contention that they were influenced by my making a personal loan to a life-long friend.

The reason for my making and Mr. Fall's accepting the loan was that we had been friends for more than 30 years. He had invested his savings for those years in his home ranch in New Mexico, which I understood was all that remained to him after his failure of mining investments in Mexico and nine years of public service in Washington, during which he could not properly attend to the management of his ranch. His troubles had been increased in 1918 by the death of his daughter and his son, who up to then had taken his place in the management of his ranch. In our frequent talks it was clear that the acquisition of a neighboring property controlling the water that flows through his home ranch was a hope of his amounting to an obsession. His failure to raise the necessary funds by realizing on his extensive and once valuable Mexican mine holdings had made him feel that he was a

victim of an untoward fate. In one of these talks I indicated to him that I would be willing to make him a loan, and this seemed to relieve his mind greatly. In the autumn of 1921 he told me that the purchase had become possible by reason of the willingness of the then owners of the Harris ranch to sell and that the time had arrived when he was ready to take advantage of my offer to make the loan.

The lease on the naval reserve No. 1 was the direct outgrowth of the contract which the Pan American Petroleum & Transport Co. made with the Navy as a result of competitive bids, in which that company was the lowest bidder, for the construction of certain storage facilities and the furnishing of fuel oil at Pearl Harbor, Hawaii, and in the absence of that contract the lease would never have been executed. The Navy Department, through its representative, took up with us the question of constructing the improvements and facilities at Pearl Harbor, and of paying for them with the royalty oil which the Navy was then obtaining from the various leases in naval reserves Nos. 1 and 2, and of filling the tankage constructed with a large quantity of fuel oil. I was entirely in sympathy with the purpose of the Navy, the reasons for which have perhaps been better explained to your committee by the Navy's representative, Armiral Robison, than I could hope to do. I promised Admiral Robison that our company would at least submit a bid to perform the work under those conditions; that is, furnish the money to pay for the work of construction at the harbor and

of filling the tanks with oil and receive in return royalty oil at the posted field price to the value of the money so expended. The incidents up to the date of the contract, and the fact that the contract was let on competitive bidding eliminate any possibility of favor to the company by either the Navy Department or the Interior Department.

The negotiations for this contract between the Navy Department and the company were conducted by our local Washington attorney who was assisted in determining the necessary calculations by our California general manager, who is president of the California company. As a result of their exchange of ideas, our California [123—50] general manager decided that the terms of the proposed contract were not such as to be of any advantage to the company and that the company could not afford to take the risks attached to the performance of the contract for the conjectural profit that might result therefrom, and he stated in a letter which he wrote to our Washington attorney.

Neither our Washington attorney nor our California general manager nor any other officer or attorney of the company had any knowledge of the loan which I made to Mr. Fall, that being an entirely private matter, involving in no way the company's funds.

When the bids were opened, it was found that the bid of the Pan American Petroleum & Transport Co. was the lowest. The Washington attorney of the company had conceived the idea of mak-

ing, in accordance with the provisions of the call for bids, in addition to an unqualified bid, an alternative bid showing a considerable saving to the Government in the actual cost of the construction under the contract, and a recompense to the Pan American Petroleum & Transport Co. for such waiver of profits by giving it an opportunity later on to extend its petroleum business in California through the acquisition of additional oil territory whenever the Navy might be disposed to make additional contracts for the development of its reserves.

The alternative bid was considered the most favorable by the representatives of the Government, as is shown by the following letter addressed to the Washington attorney of the company under date of April 25, 1922, and signed in the absence of Mr. Fall from Washington by the Acting Secretary of the Interior and the Secretary of the Navy."

(The witness then read to the committee paper dated April 25, 1922, which is Exhibit "E" to Plaintiff's Amended Bill of Complaint.)

"These facts conclusively demonstrate that there could not have been any collusion between the Pan American Petroleum & Transport Co. and anybody whomsoever.

The original contract provided for an expenditure by the company of \$6,466,795.50, which amount was reduced through economies made by the company in its construction work and its purchase of fuel oil

by about \$525,000, which together with the sum of \$235,000, the difference between the company's unqualified bid and its alternative bid, amounts to \$760,000. To this might fairly be added the sum of \$120,000 by which sum the company's unqualified bid was lower than its competitor's bid, thus making the contract an extremely advantageous one for the Government, and as before stated, uncertain in its benefits to the company.

In addition, the Government has received under a provision of the contract, the benefit of a decline of 50 cents per barrel in the price of fuel oil furnished it, amounting to about \$725,000. The construction work under this contract is practically completed, and the fuel oil has been delivered into the tanks at Pearl Harbor.

Later in the year 1922, and nearly a year after I had made the loan to Mr. Fall, the Navy Department, desiring additional storage facilities and petroleum products at Pearl Harbor, requested that the original contract of the Pan American Petroleum Transport Co. be supplemented or that a new contract be made providing for the additional work and supplies, as is shown by the letter of the Secretary of the Navy dated November 29, 1922. That letter I think is already in your record. For some time negotiations were carried on in which the president of our California company, who came on to Washington for that purpose, together with our Washington attorney, discussed all phases of the pro-

posed supplemental agreement with the representatives of the Navy and the Interior Department.

On the last day before the contract was signed, the president of the California company absolutely turned down the contract, stating that he believed there were not adequate benefits commensurate with the great risks assumed by the advancement on the part of the company of the necessary millions to pay the contractors who were to perform the construction work at Pearl Harbor and to furnish the petroleum products required. The estimated expenditure to be made under this supplemental contract for tankage facilities and petroleum products is \$9,017,000, about one-half for petroleum supplies and one-half for storage facilities. The work is well under way and about \$1,000,000 has been expended by the company on it.

This contract gave to the Navy just that service from the naval reserves that the Navy Department through its active engineering head desired, which was immediate [124—51] availability of its anticipated production, delivered where the Navy wanted it, in such quantities as were needed, and of the character and quality which the Navy's requirements called for.

In addition, a burden, the advantage of which to the Navy can scarcely be measured, was assumed by the company; that of providing for the Navy in southern California 1,000,000 barrels of free oil storage, and of devoting 3,000,000 barrels of the company's Atlantic seaboard storage to the holding

of that quantity of fuel oil subject to the Navy's call at any time for a period of 15 years.

The contract also gave the option to the Navy of purchasing at the company's terminal station at San Pedro such petroleum supplies as the Navy may require at 10 per cent below the market price.

I want to say right here that is in answer to an article I saw in a newspaper this morning to the effect that there was no chance for the Navy to get petroleum supplies. Our contract provided that the Navy could get anything it wanted at 10 per cent below the market price.

In closing, I wish to state that I left Los Angeles on January 19 to come to Washington to present a statement of all the facts to the committee, and having been informed that Mr. Fall was in New Orleans, took that route in order to apprise him of my intention and found him already in entire accord with my purpose.

Mr. McNAB.—Mr. Chairman, I would like with the permission of the honorable Senators to read an authorized statement, occupying less than a page, to this committee which I think will be beneficial in the cross-examination of Mr. Doheny to follow, if I may be so permitted.

The CHAIRMAN.—What is your name?

Mr. McNAB.—My name is Gavin McNab.

The CHAIRMAN.—What bearing would it have upon the cross-examination?

Mr. McNAB.—It will have an important bearing, I think.

The CHAIRMAN.—You say upon the cross-examination of Mr. Doheny?

Mr. McNAB.—I say it is an authorized statement by Mr. Doheny.

Mr. DOHENY.—It is not exactly a statement, Mr. Chairman, but an additional proposal which I wish to make to the committee at this time.

The CHAIRMAN.—Is it something that you request be made to the committee, Mr. Doheny?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Then there is no objection, I take it?

Senator WALSH of Montana.—Certainly not.

Mr. McNAB.—Am I now permitted to read it?

The CHAIRMAN.—Yes.

Mr. McNAB.—I now read the following statement:

Washington, D. C., January 24, 1924.

The Committee on Public Lands and Surveys,
United States Senate, Washington, D. C.

Gentlemen: On behalf of Mr. E. L. Doheny, I am authorized and instructed to make to you the following statement and offer:

While all the things stated in Mr. Doheny's testimony were innocent in all intentions, Mr. Doheny does not wish to have his company appear as dealing unfairly with or taking advantage in any way of the Government. He has always contended and now insists that his company's leases in naval oil reserve No. 1 are not only in strict agreement and

accord with the plans of the Department of the Navy for the use of said reserve but are, in his opinion, most advantageous to the Government. Nevertheless, in order to remove any basis for criticism of the transactions, Mr. Doheny suggests that your honorable committee request the President of the United States to appoint a board of experts to examine all the facts regarding these contracts. Should such board of experts report that at the time of the making of the contracts, they were not wise, desirable, and advantageous for the Government to make and the very best that the Government could have obtained, Mr. Doheny will cause the board of directors of the Pan American Petroleum & Transport Co. to reconvey to the Government all interest in such contracts, receiving in return only just compensation to his company for the actual expenditures which have been made by the company under the contracts, without profit.

Respectfully submitted,

GAVIN McNAB,

Attorney for Mr. Doheny. [125—52]

* * * * *

Senator WALSH of Montana.—I was going to inquire about who was the Washington counsel to whom you referred, and who was the manager of your subordinate company?

Mr. DOHENY.—Mr. J. C. Anderson is the manager of our California Company, and the California counsel was Mr. J. J. Cotter. * * *

Senator WALSH of Montana.—The loan was made on November 30, 1921?

Mr. DOHENY.—Yes, sir; that is the date I have here. That is the date that I remember that I made the loan.

Senator WALSH of Montana.—How do you fix that date?

Mr. DOHENY.—Well, I have the note at home, the note that former Senator Fall gave me for the money, and I remember it by the note.

Senator WALSH of Montana.—Where is the note now?

Mr. DOHENY.—It is at home. I looked for it the day I started over here, but it was impossible to locate it on that date, and there was a question between my wife and myself whether it was in New York, in my private box, or in Los Angeles. We came to the conclusion that it was in New York, so we gave up looking for it at home, and I decided to look for it in New York, when I get there to-morrow or next day.

Senator WALSH of Montana.—Will you send it to us as soon as you get there?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—Where were you when the loan was made?

Mr. DOHENY.—I was in New York.

Senator WALSH of Montana.—And where was former Senator Fall?

Mr. DOHENY.—Former Senator Fall was in Washington.

Senator WALSH of Montana.—How were the negotiations carried on?

Mr. DOHENY.—By telephone. He telephoned me he was ready to receive that loan if I was still prepared to make it, as I had proposed to do some time earlier than that.

Senator WALSH of Montana.—And apparently, then, the matter had been considered between you at some earlier date?

Mr. DOHENY.—Oh, yes, sir. I think it was—oh, probably three or four weeks before, but I don't just remember exactly, because there was no reason for fixing it in my mind.

I did not come prepared to make any statement other than the statement I have here, but if you will bear with me, I will tell you something about the conditions that led up to the making of that proposal.

Senator WALSH of Montana.—We will be glad to hear you.

Mr. DOHENY.—I had known Senator Fall for about 30 years or more. We had been old-time friends. We both worked in the same mining district in New Mexico in 1885. In those days the Indian troubles were still on the country, and we were bound together by the same ties that men usually are, especially after they leave camp where they have lived under trying circumstances and conditions. Sometimes when men are in camp where their conditions are hard, and where the struggle for a living is precarious and the danger from the

Indians is bad, they do not have such a very great feeling for each other; but after they leave there they become warmer friends by reason of having associated under the same conditions.

Furthermore, I studied law at the same time that Senator Fall did. I practiced for a short time in the same district that he did. I watched his career all through the development of it, as district attorney, United States judge, and United States Senator. I was very much interested in him on account of our old associations. I myself, followed prospecting. I was fortunate and accumulated a large amount of money. Senator Fall was unfortunate, and when he was telling me about his misfortunes, and at a time when it was coupled with his misfortune of having to bear the loss of his two children—two grown children—I felt greatly in sympathy with him. He was telling me about his hope of acquiring this ranch, and being of an impulsive nature I said to him, "Whenever you need some money to pay for that ranch I will lend it to you."

He spoke to me at that time about possibly borrowing it from Ned McLean. And he said something at that time about giving the ranch as security. I said, "I will lend it to you on your note. You do not need to give the ranch as security."

That relieved Senator Fall greatly. Later on he telephoned to me that the time had come when the ranch could be purchased. When he telephoned to me about it I sent him the money. Whether he asked for the money in the form that I sent it, or

whether I sent it in that form of my own election, I do not know. But I sent it in cash.

Senator WALSH of Montana.—This conversation was some three or four weeks before that? [126—53]

Mr. DOHENY.—Yes, sir; I think so; at least three or four weeks prior to that time. It may not have been quite that long before, but it was about that time.

Senator WALSH of Montana.—How soon after the telephone talk in which it was agreed between you that you should loan him the money did you actually send it to him?

Mr. DOHENY.—I sent it to him right away, I think the next day, or within a couple of days.

Senator WALSH of Montana.—From New York to Washington?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And the note then went back to you?

Mr. DOHENY.—Yes, sir; the note was brought back to me.

Senator WALSH of Montana.—How did you transmit the money to him?

Mr. DOHENY.—In cash.

Senator WALSH of Montana.—How did you transport the cash?

Mr. DOHENY.—In a satchel. The cash was put up in a regular bank bundle, and taken over and delivered to him.

Senator WALSH of Montana.—Who acted as your messenger in the matter?

Mr. DOHENY.—My son.

Senator WALSH of Montana.—Where did you get the cash?

Mr. DOHENY.—I got the cash from the bank, from Blair & Co.'s bank in New York.

Senator WALSH of Montana.—And how did you get it from the bank.

Mr. DOHENY.—I cashed a check.

Senator WALSH of Montana.—Have you got the check?

Mr. DOHENY.—The check I can also send you. I saw the check just before I left.

Senator WALSH of Montana.—Will you send that to the committee also?

Mr. DOHENY.—Yes, sir. And I can also, if you like, bring over the individuals in the bank who paid over the money to my son.

Senator WALSH of Montana.—How did you come to make this remittance to Senator Fall in cash?

Mr. DOHENY.—That is just what I said a moment ago. I do not remember whether it was the result of his request or whether it was my own idea of sending it to him in cash to pay for the property. But he was going to use it down in New Mexico, and I thought perhaps—well, I do not know exactly how that was, as my memory is not good on that point.

Senator WALSH of Montana.—You are a man of very large affairs, and of great business transactions, so that it was not unusual for you to have large money transactions, perhaps, but it was, was it not, an extraordinary way of remitting money?

Mr. DOHENY.—I do not know about that. But if you wish to ask me on that score, while they relate to a good many things that have no connection with this at all, I will say I think I have remitted more than a million dollars in that way in the last five years. It was not an unusual thing, due to the fact that we were doing business on a large scale in Mexico, and there we are held up by every band of robbers in Mexico that we meet up with, and in fact we are now being held up by a band of Huerta's forces.

Senator WALSH of Montana.—I was not speaking of Mexico. I dare say that a remittance to Mexico would require that it be made in essentially a different way than in this country. But I am speaking of a remittance from New York to Washington.

Mr. DOHENY.—Well, it was not unusual in my business, Senator Walsh, to make a remittance in that way. And I might say here that in making the decision to lend this money to Mr. Fall, I was greatly affected by his extreme pecuniary circumstances, which resulted, of course, from a long period, a lifetime of futile efforts. I realized that the amount of money I was loaning him was a bagatelle to me; that it was no more than \$25 or \$50

perhaps to the ordinary individual. Certainly a loan of \$25 or \$50 from one individual to another would not be considered at all extraordinary, and a loan of \$100,000 from me to Mr. Fall is no more extraordinary.

Senator WALSH of Montana.—I can appreciate that on your side, but looking at it from Senator Fall's side it was quite a loan.

Mr. DOHENY.—It was, indeed; there is no question about that. And I am perfectly willing to admit that it probably caused him to have such a feeling that he [127—54] would have been willing to favor me, but under the circumstances he did not have a chance to favor me. He did not carry on these negotiations. That is the point I would like for you to understand; that Senator Fall, in my opinion, was not influenced in any way by this loan, because the negotiations were carried on by men who were not under his control.

Senator WALSH of Montana.—When did the negotiations commence which eventuated in the contract of April 25, 1922?

Mr. DOHENY.—I do not know. I think they commenced along in February. I was not so familiar with them. It was when we were requested to make a bid. It might have been as late as March, 1922.

Senator WALSH of Montana.—There is some evidence here to the effect that the negotiations for that contract and the negotiations for the Sinclair contract ran along together.

Mr. DOHANY.—Well, that is not true. I do not think they did, Senator, notwithstanding the testimony here, as I remember the situation.

Senator WALSH of Montana.—If I remember correctly, Senator Fall gave testimony substantially to that effect.

Mr. DOHENY.—I am still of the opinion that there were no negotiations on our part, that we simply put in our bids when the request for bids came out.

Senator WALSH of Montana.—Wait a minute. The request for bids, in the first place, resulted in your contract of June, 1921, for the drilling of 22 offset wells?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And you were operating under that contract during the month of June or July, 1921, and from that time on, were you not?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—So that the time these negotiations were carried on resulting in the loan, you were operating under that contract?

Mr. DOHENY.—Under the contract of June?

Senator WALSH of Montana.—Yes.

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And that was made upon competitive bids?

Mr. DOHENY.—Yes, sir; and so was the contract of April 25, 1922.

Senator WALSH of Montana.—Now, then, the

Department again called for bids for the construction of storage tanks at Pearl Harbor?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And with respect to that you submitted two bids, as I understand from your statement?

Mr. DOHENY.—Yes, sir; simultaneously.

Senator WALSH of Montana.—One of which conformed to the proposals.

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana. And the other conforming to the proposal, but offering a reduction in the amount and a compensatory feature giving you the preference right to the lease if the Department should conclude to lease?

Mr. DOHENY.—Yes.

Senator WALSH of Montana.—Well, of course, it was open to the department to accept either one of those bids it saw fit, you having tendered them, was it not?

Mr. DOHENY.—I think so. In fact, Senator, I do not wish to interpolate anything here, but I would like to insist—

Senator WALSH of Montana.—Mr. Doheny, I want to give you a perfect opportunity to make any statement in connection with the matter you wish to make.

Mr. DOHENY.—I still want to insist that I did not know anything at all about this Pearl Harbor contract until sometime along in January, Febru-

ary, or March, 1922—that is, as to the Pearl Harbor contract I am speaking of now.

Senator WALSH of Montana.—Yes; I am speaking about that contract. But when you speak, Mr. Doheny, about it being impossible to favor you in connection with the matter, the department was at liberty to take either one of your proposals.

Mr. DOHENY.—Yes; and Mr. Finney decided that this was the proposal to take.

Senator WALSH of Montana.—Was the one he would like to take?

Mr. DOHENY.—Yes, sir. And the Secretary of the Navy agreed with him in accordance with the letter he sent to us deciding upon the second proposal. [128—55]

Senator WALSH of Montana.—What was the conversation had with Senator Fall anterior to your making the loan concerning his efforts to raise money?

Mr. DOHENY.—He was not making any efforts to raise money. He was just telling me of his hopes, that he wanted to buy this ranch, and how he had expected to borrow the money or get to Ned McLean, I think it is Ned McLean, to advance the money and take the ranch as security, or something of that sort. I thought to myself that was a hint to me if I wanted to so take it, and I took it very gladly, and said to him that I would loan him the money.

Senator WALSH of Montana.—Yes; but, Mr. Doheny, I understood your statement to contain the

assertion that Senator Fall had failed to raise the money on his Mexican properties.

Mr. DOHENY.—Well, now—

Senator WALSH of Montana.—(Interposing.) I wish you would tell us about that. What did he tell you about it?

Mr. DOHENY.—Well, not that he had failed to raise it on his Mexican properties. I do not think I said it just in that way. I think what I said was, that having failed in his efforts—I think the language of the statement would be best.

Senator WALSH of Montana.—Will you turn to the statement and read what it does say on that point?

Mr. DOHENY.—Yes, sir.

(The witness began looking through the statement he had just read.)

Mr. DOHENY.—(Reading from his statement:)

The reason for my making and Mr. Fall's accepting the loan was that we had been friends for more than 30 years. He had invested his savings for those years in his home ranch in New Mexico, which I understood was all that remained to him after the failure of mining investments in Mexico and nine years of public service in Washington, during which he could not properly attend to the management of his ranch.

Oh, yes; here is the statement you referred to (reading):

In our frequent talks it was clear that the acquisition of a neighboring property controlling the water that flows through his home ranch was a hope of his, amounting to an obsession. His failure to raise the necessary funds by realizing on his extensive and once valuable Mexican mine holdings had made him feel he was a victim of an untoward fate.

Senator WALSH of Montana.—That is what I referred to.

Mr. DOHENY.—Yes; that was just a casual talk that men make when they tell about their being in poor circumstances. Nearly all of us can blame fate or something else other than ourselves for our lack of having money, and Fall had been struggling like I had for money all his life, and he had had large properties in Mexico, he was interested there with W. C. Green who had discovered the Cananea mines, who was his partner and attorney for a great many years, and he had had holdings that were supposed to be very valuable. Now, those holdings were made less valuable by the disturbances that commenced in 1910, and are continuing up to the present time, because, regardless of what the American people may think about it, the Mexican affairs are not settled yet, and Senator Fall failed to make the fortune which he hoped to be able to use in establishing his home in New Mexico out of the sale of those mines. Those mines had become a defunct proposition so far as making any money out of them was concerned. Now, the revolutions in

Mexico have not hurt the mines, but they have hurt his opportunity to make money out of the mines.

He had an associate down there whom I understood was very friendly to him, and from whom he might possibly borrow some money, but that associate, I don't believe had the money convenient. That was Price McKinney, of Cleveland. So it pointed to me as Fall's only friend who had money in plenty in the form of cash that could be spared.

Senator WALSH of Montana.—Well, perhaps, I misinterpreted your statement then, Mr. Doheny. [129—56]

Mr. DOHENY.—It is in the middle of that page, there, Senator.

Senator WALSH of Montana.—Your statement is:

His failure to raise the necessary funds by realizing on his extensive and once valuable Mexican mine holdings had made him feel he was the victim of an untoward fate.

I understood that to mean that Senator Fall had told you that he had attempted to raise the money in order to purchase the ranch in some way on his Mexican holdings. Is that the case?

Mr. DOHENY.—I don't remember, although it might well have been, because he had a friend who was interested with him in the mines, and he was a very wealthy man, and he might well have told me that he had expected that he might be able to raise the money from Price McKinney.

Senator WALSH of Montana.—That is what I

want to know. Did you have such a conversation with him?

Mr. DOHENY.—I don't really know whether I did or not, because I met Mr. McKinney at Mr. Fall's house in Washington, D. C., that is, at his apartment, once or twice. I have been there many a time. We have talked over these things. We were always talking about the old-time days in which Price McKinney himself shared, and it may very well have been that he did speak to me about that, but I knew that he had failed to raise money. Not that he had failed to raise this particular money, because at this particular time he was depending upon raising the money by getting Ed McLean to buy the ranch and hold it or something of that sort, and when it came up to me I made up my mind that I would offer the money, and I did.

Senator WALSH of Montana.—Well, the only person that Senator *Walsh* talked to you about from whom he might get the money was Ed McLean?

Mr. DOHENY.—Well, I think that he might very well have mentioned Price McKinney too, because McKinney was his partner.

Senator WALSH of Montana.—Would you say that he did?

Mr. DOHENY.—I would not swear that he did, no.

Senator WALSH of Montana.—Or that he did not?

Mr. DOHENY.—No, I would not swear that he

did or that he did not; but I say that he might very well have done it.

Senator WALSH of Montana.—Do you know whether Mr. McKinney is in such circumstances as to enable him to make a loan of that sort?

Mr. DOHENY.—I understood that he was. I don't know much about Mr. McKinney's circumstances.

Senator WALSH of Montana.—He lives at Cleveland?

Mr. DOHENY.—Yes, sir. He is in the steel and iron business over there. Of course, I realize that there are very few men who have \$100,000, or any large amount of cash that they can spare out of their business, and I am willing to make the concession right here that I have, and I have had for a long while, and if I wanted to make a loan to Senator Fall of \$100,000 that it did not interfere at all with ordinary affairs of my business, or if I wanted to make a loan to him of a million dollars. I am not saying that boastingly; I am saying it in excuse of the transaction, because the loan was a *bona fide* loan for the purpose of accommodating an old friend, on his note, which I insisted on his paying and will insist on his paying if his health remains good—re-pay, I mean.

Senator WALSH of Montana.—Mr. Doheny, you knew at that time, of course, that Senator Fall was charged with the administration of all of the oil lands of this country in the public domain?

Mr. DOHENY.—Yes.

Senator WALSH of Montana.—At least outside of the naval reserves?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And that the power of disposing of the naval reserves had practically been assigned to him by the Executive order?

Mr. DOHENY.—Well, I don't believe I knew about that, though I may have known about it. I do not disclaim any knowledge of it.

Senator WALSH of Montana.—Now, did your company hold at that time any leases on the public domain outside of the naval reserves?

Mr. DOHENY.—Yes, sir; we held the lease on section 6 adjoining the naval reserve that we got from the Interior Department. [130—57]

Senator WALSH of Montana.—When did you get that lease?

Mr. DOHENY.—We got that lease—I got that from John Barton Payne. Mr. McNab, my attorney, assisted us in getting it. And with regard to that, I don't know anything, Senator, because I want to say to you that the remark you made a while ago is perfectly true. There is nothing extraordinary about me. I am just an ordinary, old-time, impulsive, irresponsible, improvident sort of a prospector, and I do not pretend to keep track of the detail of our business. This particular business—I don't even know the Secretary from whom we got section 6, and I never saw the documents through which we got it. They were arranged by Mr. Anderson in conjunction with Mr. McNab. Mr.

Anderson is my brother-in-law and general manager of my property in California, a very astute man, the best judge of oil lands that I know of in the State of California; and the reason I am telling you that particular thing is that the fact that he was disgusted with these two contracts and found fault in my agreeing to them, showed that there could not have been any collusion, because he wouldn't have given a 5-cent piece for them. That is only corroborative evidence. In this section 6 Mr. Anderson assisted Mr. McNab in acquiring it.

Senator WALSH of Montana.—I would rather have your judgment about an oil proposition than anyone else's.

Mr. DOHENY.—I would rather have my own.

Senator WALSH of Montana.—Getting back, do you recall how your attention was first attracted to the matter of the construction of the tanks at Pearl Harbor?

Mr. DOHENY.—The matter of the construction of the tanks, no; but the matter of the carrying out of that plan, that was first called to my attention by Admiral Robison. Admiral Robison came to me and asked me about the plan, whether or not I believed that he could get somebody to bid or see that they could get a bid by some responsible oil company and construct those tanks and take the pay in the form in which it is given in that contract, and I promised him that there would be at least one bid. I said, "I don't know what other companies will do, but we will give you at least one bid," and there

were really three bids given on that, too. While we talk about two, there were really three. The Standard Oil made a bid to fill the tanks, but they made no bid to construct them.

Senator WALSH of Montana.—Well, that is, as I understand you then, Mr. Doheny, that before the plan for constructing the tanks had actually been determined upon you had been consulted about the matter by Admiral Robison?

Mr. DOHENY.—Whether or not he could get a bid by some company to take it in oil; yes, sir.

Senator WALSH of Montana.—On this?

Mr. DOHENY.—Yes, to take the pay for the construction in oil.

Senator WALSH of Montana.—Well, of course, that must have been at some time antecedent to the public proposal for the bids?

Mr. DOHENY.—Yes, sir; probably was."

(At this point in the Senate Hearings Senator Walsh read to Mr. Doheny extracts from minutes of meeting of the Navy Council held October 18, 1921, set forth elsewhere herein as Exhibit "C"; letter of October 25, 1921, to the Secretary of the Interior from the Secretary of the Navy, Exhibit 24 in this case, and letter dated October 30, 1921, from Secretary Fall to the Secretary of the Navy, acknowledging the last mentioned, Exhibit 24-A herein. The examination then proceeded as follows:)

Mr. DOHENY.—Well, pardon me, Senator, but neither one of those letters refer to or involve any-

thing which concerned our company. I did not have any knowledge at the time of the discussion that was going on in the Navy other than—well, I didn't have any knowledge at all, but I had talked it over with Admiral Robison at some time prior to our bid on that lease, and I told him that we would certainly make one bid. I think that was when they were talking about making bids. [131—58]

The CHAIRMAN.—Lease or contract?

Mr. DOHENY.—Well, contract—the Pearl Harbor Contract. * * *

Senator ADAMS.—Mr. Doheny, I wanted to ask you one question. As I understand, your conversation with Mr. Fall leading up to the loan was a telephone conversation from Washington to New York?

Mr. DOHENY.—No; the last conversation which culminated in the loan, yes, sir.

Senator ADAMS.—Well, at that time, at the time of that conversation did Mr. Fall advise you that he had already received checks from McLean covering a loan?

Mr. DOHENY.—No, sir.

Senator WALSH of Montana.—Oh, Mr. Doheny, I omitted another matter I wanted to ask you about. How was the note transmitted to you?

Mr. DOHENY.—By my son. He brought it right back to me and handed it to me.

Senator WALSH of Montana.—That is all.

The CHAIRMAN.—Mr. Doheny, you had long been of the opinion that these naval reserves should be leased by the Government, had you not?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—On account of the loss by drainage?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And you received your first leases in June, 1921?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Now, with reference to this contract of April 25, Mr. Doheny. First, I will say, you testified, I believe, and your statement says that you think Mr. Fall might have been favorably disposed toward you by reason of the accommodation that you had made, but that the contract in question shows clearly upon its face, and the attendant circumstances, that Secretary Fall had nothing to do with it. Is that true?

Mr. DOHENY.—That he had nothing to do with the terms of it is absolutely true.

The CHAIRMAN.—With the terms of it?

Mr. DOHENY.—Yes, sir; except the signing of it.

The CHAIRMAN.—And also that your associates were opposed to that contract?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—That is the contract of April 25, 1922?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Now, as a matter of fact, Mr. Doheny, that contract was entered into by you not with the idea of profit at all, was it?

Mr. DOHENY.—It was entered into by me with the idea that we could handle the oil in such a way

as to make possibly some profit *out the* exchange, because we were getting crude oil and delivering fuel oil in lieu of it.

The CHAIRMAN.—Did you not testify before, Mr. Doheny, just to refresh your recollection, that the profit that you expected to make on it was by the carriage from San Francisco, or whatever the point of shipment was, to Pearl Harbor?

Mr. DOHENY.—That was true.

The CHAIRMAN.—And that you did not expect to make any other profit out of that contract?

Mr. DOHENY.—That is true; yes, sir.

The CHAIRMAN.—So that this is not the contract out of which you will make any profit, if there be profit?

Mr. DOHENY.—No, sir.

The CHAIRMAN.—Out of your connection with the naval reserve No. 1?

Mr. DOHENY.—That is true.

The CHAIRMAN.—Now, so far as naval reserve No. 1 is concerned, in this contract that you now speak of, the only right that you got by that contract was a preferential right to lease certain lands, was it?

Mr. DOHENY.—That was all I got by the contract of April 25, 1922; yes, sir.

The CHAIRMAN.—Yes; and that was merely a right to lease lands upon the same terms that anyone else was willing to lease them?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—So that is the contract that

you refer to as your associate being opposed to—the contract which you had no thought of making any substantial profit out of; am I correct?

Mr. DOHENY.—Yes, sir; but the reason that they were opposed to it is not because [132—59] they did not want us to take a contract on the same terms as anybody else, but because we had to advance approximately \$9,000,000 in order to take advantage of that.

The CHAIRMAN.—Oh, I understand.

Mr. DOHENY.—Yes.

The CHAIRMAN.—But at the same time it was not a contract that you were entering into for profit?

Mr. DOHENY.—No; Mr. Anderson was opposed to both contracts, as his written protest to Mr. Cotter will show.

The CHAIRMAN.—What do you say—to both contracts?

Mr. DOHENY.—The original contract of April 25, 1922, and the supplemental contract of December 12, 1922.

The CHAIRMAN.—And the supplemental contract?

Mr. DOHENY.—Yes; he was opposed to both of them. The latter he was very bitterly opposed to, and he left the room and wouldn't make the agreement at all, and I had to make the agreement and give the admiral assurance that I would go ahead with it.

The CHAIRMAN.—I was coming to the Decem-

ber contract. You make no reference in your letter to the December contract.

Mr. DOHENY.—I make reference to both of them.

The CHAIRMAN.—This letter which was put in evidence is a letter dated April 25, 1922?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—About the time of the first contract. Now, do you make any reference to the December contract here in this statement?

Mr. DOHENY.—I think I do. I am not quite sure. All of these copies have disappeared, so that I can not get hold of one to see just what it was.

The CHAIRMAN.—I will be glad to have you look at it.

Mr. DOHENY.—It is on the bottom of page 6.

The CHAIRMAN.—Yes. But there is no reference to that contract as one that Mr. Fall had no connection with. It is the April contract which you set out was made by the Acting Secretary and the Secretary of the Navy?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Now, what is the fact with reference to that?

Mr. DOHENY.—The fact with regard to this is that, so far as I know, Mr. Fall had no connection whatever with it.

The CHAIRMAN.—But you do know whether he did or not?

Mr. DOHENY.—Well, I am pretty certain he didn't, because the last few days I was here—I was

here at the time that these negotiations were objected to so strenuously by Mr. Anderson, and I never saw Mr. Fall. I don't remember whether he was in the city or not, but I do know that Admiral Robison was the one who decided upon every point. We had a conference on that—Mr. Ambrose, who used to be with the Navy, and isn't with them now; Mr. Bain, who testified before this committee; Admiral Robison; Mr. Anderson; Mr. Cotter, and myself. I was in the negotiations very little, but they used to call me in every once in a while when they came to a point that they couldn't agree on, and Anderson then ran it down cold and said he wouldn't have anything to do with it. "You have got to make a contract of that sort, Mr. Doheny; I wouldn't touch it." That is the fact, and I think we have got some documentary evidence to prove that. If we haven't, we have got the evidence of those present—Mr. Bain, Ambrose, Admiral Robison, and Mr. Cotter.

The CHAIRMAN.—What was in your mind, Mr. Doheny, in this statement in setting out so in detail the contract of April 25, out of which you expected to make no profit.

Mr. DOHENY.—Yes.

The CHAIRMAN.—(Continuing.) And saying that Mr. Fall had no connection with that contract, but making no mention of Mr. Fall's connection in the December contract, which is the contract out of which you expect to make a profit?

Mr. DOHENY.—Well, but the December contract

is merely a supplemental contract, and would not have been entered into and could not be entered into except as a part of the other contract. Your question, Senator, suggests another answer, and that is, that the object of my testimony, the purpose of this testimony is to show that there was no collusion between Mr. Fall and myself to in any way defeat the Government or to deprive the Government of any of its rights or advantages [133—60] under any of these contracts. The best proof of that is this—and this may not be fair—but if I was in collusion with Senator Fall, if there was any collusion between Senator Fall and myself, there must have been collusion between Mr. Ambrose and Mr. Foster Bain and Admiral Robison and my brother-in-law, Mr. Anderson, my attorney, Mr. Cotter, and Secretary Denby, none of whom knew anything about the loan. Of those people Senator Fall was the only one who knew anything about the loan, and he didn't take any part in the examining of the contracts.

The CHAIRMAN.—I am not asking you about the question of collusion, I am examining you concerning your own statement, that by reason of your accommodation to Mr. Fall you think that had he a discretion to exercise he might have been more likely to exercise it in your favor.

Mr. DOHENY.—Why, I admit that.

The CHAIRMAN.—Very well.

Mr. DOHENY.—I don't think he is more than human.

The CHAIRMAN.—The contract of April 25, which you speak of at length in your statement, did not give you a lease of a foot of ground in this naval reserve.

Mr. DOHENY.—I see.

The CHAIRMAN.—It merely gave you a preferential right to lease the Government lands in this part of the reserve (indicating on the map) whenever the Government chose to lease it, and at the same terms that anybody else was willing to pay.

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Now, your contract of December 12, as a matter of fact, gave you a lease of the entire reserve?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—At fixed royalties?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And it is that contract out of which you testified that you expect to make \$100,000,000?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Now, Mr. Doheny—

Mr. DOHENY.—But pardon me for a moment, Mr. Senator. For fear that that statement may seem to you as wild as it seems to a great many of my friends. If anybody had spoken to the gentleman who invented the telephone, or to Mr. Ford in the early days of his business—if he had said to them, that he expected to make two or three hundred million dollars out of his machine he would have been regarded by his own associates as crazy.

And the oil people of California, the oil men who have a knowledge of the business were satisfied in their own minds that I had gotten a lemon from the Government when I took that contract of April 25, 1922.

The CHAIRMAN.—Yes; the one of April.

Mr. DOHENY.—Yes; and they didn't regard the other one highly; nobody regarded the other one highly. They said that with the responsibility which I assumed for my company, which meant that I had to expend over \$14,000,000, that there was nothing known about the territory that justified advancing that amount of royalty. That is what they all thought. My thoughts about that I gave to you honestly, and I expect to make \$100,000,000 out of that contract.

The CHAIRMAN.—Under your statement on the 25th of April you yourself did not enter into it for profit.

Mr. DOHENY.—Yes; that is right.

The CHAIRMAN.—But the contract of December you certainly did enter into for profit?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And you testified before this committee that you expected to make \$100,000,000 of profit.

Mr. DOHENY.—Yes, sir.

✓ The CHAIRMAN.—Now, if Secretary Fall did in fact exercise his judgment about the granting of that contract in December, in view of your own statement that you think he might be influenced in

your favor by reason of the loan by you, wouldn't you be willing, Mr. Doheny, in view of those facts, to turn back that contract to the Government.

Mr. DOHENY.—I would be willing to do just what I have offered, Mr. Chairman.

The CHAIRMAN.—You have offered to do it upon a basis of experts examining [134—61] the question. I am asking you now: In view of that situation, of your possibly having secured an advantage, whether you are not willing to turn the contract back to the Government as it stands?

Mr. DOHENY.—If that will clear Mr. Fall of any suspicion of collusion, I will be very glad, indeed, to suggest that to our company. Now, recollect, I am not our company. While I exercise a great deal of influence on it, we have 9,000 stockholders and we have a board of directors.

The CHAIRMAN.—It would clear you of any suspicion of profit, of course, out of the Government.

Mr. DOHENY.—What is that.

The CHAIRMAN.—It would clear you of any suspicion of profit out of the Government. I am not speaking of collusion.

Mr. DOHENY.—Well, if it will clear Senator Fall from any suspicion of being in collusion, I am perfectly willing to do it.

The CHAIRMAN.—Now, Mr. Doheny, you testified before this committee on the 3d of December?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And two or three days be-

fore that testimony came before the committee regarding the purchase of this ranch by Mr. Fall. And that was a matter of a great deal of comment at the time you were on the stand before, was it not? That was a matter of a great deal of comment at the time you were on the stand before the committee before, the purchase of that ranch by Mr. Fall?

Mr. DOHENY.—Prior to my going on the stand; yes, sir.

The CHAIRMAN.—Prior?

Mr. DOHENY.—Prior to my going on the stand.

The CHAIRMAN.—Yes; prior to your going on the stand, and it pointed the finger of suspicion at Mr. Fall, didn't it?

Mr. DOHENY.—Yes.

The CHAIRMAN.—And you felt very badly about that?

Mr. DOHENY.—Yes.

The CHAIRMAN.—In fact, you testified before the committee, did you not, as follows, repeating practically what you have said to-day (reading):

I have known Secretary Fall since 1886. We mined in the same camp, studied law in the same judicial district, and began practicing at about the same time. I knew him as a judge on the bench and as Senator and as Secretary of the Interior, and I want to tell you gentlemen that I felt very badly when I heard the reflections made upon his integrity in this meeting. I want this record to show that I felt very badly about it. In fact, greatly outraged about it.

Yet at that time, Mr. Doheny, you could have told the committee the facts.

Mr. DOHENY.—I went back to New York from here—I don't know just what date it was that I met Mr. Fall there, and I told him, I advised him, to go before the committee and tell the facts just exactly as they were. I not only told Mr. Fall, but I told another gentleman who was associated with me there, who was one of my attorneys—we have a great many attorneys connected with our legal department—and I told Mr. Harold Walker, who lives now in this city, that I wanted him to tell Fall for me, to urge upon Fall to go and make a clean breast of this entire loan. That was on either the 7th or the 8th of last December. And I think that Walker did. I don't know whether he did or not. I don't know whether he took it upon himself to do that or not. But I told that to Walker, and I told it to Fall at that time. I felt that it was not wise for him to do anything other than to just make a clean breast of the whole business.

The CHAIRMAN.—At the time you made this loan, Mr. Doheny, you had had relations with the Interior Department with reference to this very naval reserve, and had a certain lease?

Mr. DOHENY.—Our company had, Mr. Chairman.

The CHAIRMAN.—I say your company, and you expected to have other relations, did you not?

Mr. DOHENY.—I didn't know whether we would

or not. There was nothing in sight at that time.
[135—62]

The CHAIRMAN.—Well, so far as offset wells were necessary from time to time your company had got into that field, hadn't it?

Mr. DOHENY.—Yes.

The CHAIRMAN.—You expected, of course, did you not, to continue?

Mr. DOHENY.—Well, we expected, of course, to be always in the field to bid on any contracts that the Government had to let.

The CHAIRMAN.—Yes.

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Well, did it occur to you at all, Mr. Doheny, that to get a contract from the department under those circumstances, other than by competitive bidding, would be a matter of embarrassment?

Mr. DOHENY.—Oh, I don't think we did, Mr. Chairman.

The CHAIRMAN.—You didn't?

Mr. DOHENY.—No, sir.

The CHAIRMAN.—Why, this contract was not by competitive bidding, was it?

Mr. DOHENY.—I think it was.

The CHAIRMAN.—Well, let us see. Bids were called for, were they not?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And you made two bids?

Mr. DOHENY.—Yes.

The CHAIRMAN.—One of them strictly under the proposal?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And another in which you made a proposition that no other bidder was permitted to make; that you would make a price—\$235,000, I think was the sum?

Mr. DOHENY.—Yes.

The CHAIRMAN.—Less, provided you could have a preferential right to lease certain lands.

Mr. DOHENY.—Yes.

The CHAIRMAN.—No other bidder had that opportunity?

Mr. DOHENY.—They did. Any bidder that wanted to could have made an alternative bid.

The CHAIRMAN.—You mean they could have made a conditional bid?

Mr. DOHENY.—Yes.

The CHAIRMAN.—But that was not a part of the proposal, was it?

Mr. DOHENY.—No.

The CHAIRMAN.—Certainly.

Mr. DOHENY.—The attorney who made it made it without any authority other than by wiring to me at Los Angeles. It was his own conception, and he afterwards was opposed to taking the bid. If you read carefully that letter of Mr. Finney, you will see that he was opposed to having the bid made that way. That he would rather they would take the straight bid than the alternative bid.

The CHAIRMAN.—Yes; but as a matter of fact

the bid that was accepted was not a bid according to the proposals, was it?

Mr. DOHENY.—No.

The CHAIRMAN.—No. Then when we come to the December contract where you really got your lease in naval reserve No. 1, what bidding was there there?

Mr. DOHENY.—The December contract was a supplemental contract to the other contract, and it was at the suggestion of the Navy to modify our other contract. That suggestion came from Secretary Denby, as I remember. I haven't read these letters, all of them, but I glanced through it this morning for the purpose of getting a little knowledge of this matter in case I was questioned about it.

Senator WALSH of Montana.—Senator, I would like to interrupt there. From Secretary Denby?

Mr. DOHENY.—From Secretary Denby; yes. Secretary Denby was the one who suggested that a modification of our contract be made, and in order to enable us to extend further the port facilities at Pearl Harbor. I think that was according to a suggestion by Secretary Denby to the Secretary of the Interior. * * *

Senator SMOOT.—Mr. Doheny, have you made any estimate as to the amount that you would make on each barrel of oil that would make the \$100,000,000 that you have testified to?

Mr. DOHENY.—Well, that was an offhand estimate, but I think that it is fair to say that in the re-

fining and marketing of oils there that we would make a [136—63] minimum of a dollar a barrel.

Senator SMOOT.—Would this \$100,000,000 that you speak of include the refining of the oil?

Mr. DOHENY.—That included all the profit from the handling of the oil from that reserve in every way—the piping, storing, refining it, and selling it to the consumers, and that was based upon a rapid mental calculation that I made, on this theory, which is not a bad one to go by. The average price of oil has fluctuated greatly in the last 5 or 6 or 10 years—in fact, throughout its entire history—but the amount of oil in the world is of course decreasing with the consumption. The consumption of oil is increasing with the addition of new facilities for using it, and the prices that were paid for oil two years ago were more than a dollar a barrel above the price that obtains now. They paid as high as \$2.50 a barrel—more—and if the market price of oil at \$2.50 a barrel or at \$1.50 a barrel or at \$1 a barrel above the present price could be justified I believe that the market price in the future will justify the expectation that that will be the profit, at least a dollar a barrel difference.

The CHAIRMAN.—How much did you expect to get out of this reserve?

Mr. DOHENY.—I said I expected to make \$100,000,000 out of the drilling of the oil out of this reserve. Of course in doing that we would probably have to invest in the neighborhood of a hundred

to a hundred and fifty million dollars in drilling, probably \$100,000,000, because if this reserve is drilled it will take a well for every 10 acres, that would make 3,200 wells, and at \$30,000 a well that would make \$96,000,000 for the drilling alone, without the pipage, storage, refining, and marketing facilities. I have already spent in preparation for the development of this lease \$32,000,000, and I am prepared to spend more in preparation for the development of this lease. I have got the figures with me to show just what we have spent, if you are interested at all in seeing them. * * *

Senator BERSUM.—Mr. Doheny, you said that you expected to make a profit of \$100,000,000 out of this oil.

Mr. DOHENY.—Yes.

Senator BERSUM.—How long a period would you expect to be covered in recovering that amount?

Mr. DOHENY.—Well, during the lifetime of the lease. I would say that the wells would be hardly worth pumping probably in the course of 30 or 40 years. It would take a long while to do it. But the profits would not come in that proportion. The profits would come in irregular proportion to the production. At times when the production would be highest the price might be so low that you would not get as much money out of it as when the production would be lower. For instance, to-day in California with 400,000 barrels a day less production than obtained two months ago they can get more for the oil than they got

two months ago. The price of oil has changed some. So that the profit on the oil taken from that territory could easily be figured on the basis of \$1 a barrel throughout the entire lifetime of the lease. The lifetime during the term of the lease.

* * *

Senator DILL.—Coming back to this loan to Secretary Fall, have you loaned anyone else in the Interior Department or the Navy Department any money in the last year or two?

Mr. DOHENY.—No, sir.

Senator DILL.—Did you ever make a loan to Secretary Fall previous to this one?

Mr. DOHENY.—No, sir.

Senator DILL.—You never loaned him \$100,000, or any such sum?

Mr. DOHENY.—No, sir.

Senator DILL.—How do you fix the date of this note? You say you have not the note. How do you fix the date of November 30?

Mr. DOHENY.—Because I have got the check I used to draw the money, and I have seen the note several times. I know it is November 30.

Senator DILL.—When is the note due?

Mr. DOHENY.—Due on demand.

Senator DILL.—And is there interest?

Mr. DOHENY.—There is no interest on it.

Senator DILL.—No payments have been made on it?

Mr. DOHENY.—No, sir; no payments have been made on it.

Senator DILL.—Where was it to be paid?
[137—64]

Mr. DOHENY.—To be paid either in New York or Los Angeles.

Senator DILL.—Where was the note made out?

Mr. DOHENY.—I suppose it was made in Washington.

Senator DILL.—And mailed to you?

Mr. DOHENY.—No; it was delivered to my son, to deliver to me.

Senator DILL.—When he brought the money?

Mr. DOHENY.—Yes; when he brought the money.

Senator DILL.—You gave him the money before he sent you the note?

Mr. DOHENY.—Oh, yes.

The CHAIRMAN.—Did you give any directions as to the terms of the note?

Mr. DOHENY.—No, sir; except that it was to be on demand.

The CHAIRMAN.—Do you know in whose handwriting the note is?

Mr. DOHENY.—I think it is in Secretary Fall's handwriting; the signature to the note, and the rest of it.

The CHAIRMAN.—You think it is a note without interest?

Mr. DOHENY.—I think the rate of interest was left for me to fill in; yes, sir. * * *

The CHAIRMAN.—Mr. Doheny, what are your

expectations with reference to the repayment of this loan.

Mr. DOHENY.—Well, I will tell you frankly now,—I don't know whether this has any connection whatever with the investigation—but I expected that if the Senator did not sell or turn over that land that later on I might employ him in connection with our affairs in Mexico, with which he is very conversant, and I would pay him a salary large enough of which he could pay about one-half to apply on the note, and pay it off in five or six years. And that was my expectation.

The CHAIRMAN.—You had that in mind at that time?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—If Mr. Fall does not enter your employ, do you ever expect to press him for payment of the note?

Mr. DOHENY.—Well, I don't know. If Mr. Fall is well enough and in good health, I expect he will enter my employ.

The CHAIRMAN.—You do expect that?

Mr. DOHENY.—Yes, sir. * * *

Senator STANFIELD.—Were you at all concerned as to what application Senator Fall made of the money that he borrowed from you?

Mr. DOHENY.—No, sir; not at all.

Senator STANFIELD.—You just loaned him the money to use as he saw fit?

Mr. DOHENY.—I loaned him the money to use as he saw fit, because he was badly in need of money

and because he was an old friend and seemed to be anxious to have the money to use for some purpose in connection with his ranches. I was an old friend of his and could afford to lend it to him, and I did lend it to him, just exactly as I told you, without any expectation that he would be able to pay it back out of the ranch or as to what source he could pay it back from.

Senator ADAMS.—Did he tell you that he could have gotten that money from his bankers in Colorado?

Mr. DOHENY.—No. * * *

Senator ADAMS.—Well, he did say to you that he was hard pressed and had difficulty in getting the money?

Mr. DOHENY.—I do not think he even said that. He was just telling me about his hopes and ambitions, and about his disappointments, etc., and about his desire to get this ranch, and that he was going to borrow the money to get it. Just what his language was I do not know, but the substance of it was that it made such an impression upon me that I advanced him the money out of the plenty that I had to use for the purpose of that which would relieve his mind.

Senator ADAMS.—And your impression was that it was necessary in order to relieve his mind?

Mr. DOHENY.—Yes, sir.

Senator ADAMS.—It was really befriending a friend in need?

Mr. DOHENY.—That is just what it amounted to.

Senator ADAMS.—And you also understood that the expenditures on his ranch exceeded \$100,000?

Mr. DOHENY.—I did not know a thing at all about that. [138—65]

Senator ADAMS.—Did you not make a statement a few moments ago to the effect that you understood the \$100,000 would not cover the expenditures on the ranch?

Mr. DOHENY.—I made the statement that I understood he made expenditures upon the ranch, and that the \$100,000 would not have bought the ranch and covered the expenditures. I think I made that statement in reply to a question from Senator Walsh.

Senator WALSH of Montana.—That is the way I understood you. That was information you had since acquired?

Mr. DOHENY.—That was information I got from sitting here and hearing the testimony with regard to the improvements made upon the ranch.

Senator PITTMAN.—Mr. Doheny, at the time you discussed the making of this loan to Senator Fall, was there any discussion with regard to repaying you the money?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—He did not say he thought he could ever repay it?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—Was there any discussion as to security?

Mr. DOHENY.—Yes; he offered me the ranch

as security. He offered me the ranch he was going to buy with money as security.

Senator PITTMAN.—Well, did he ever buy those ranches?

Mr. DOHENY.—I understand he did.

Senator PITTMAN.—Did he ever speak to you about giving you the ranches for security after he bought them?

Mr. DOHENY.—No, sir; and I would not have taken it if he had.

Senator PITTMAN.—Did he ever talk to you about the ranches after he bought them?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And he had already given you the notes, had he?

Mr. DOHENY.—Yes, sir—only one note. There was only one note.

Senator PITTMAN.—How much was that note?

Mr. DOHENY.—\$100,000.

Senator PITTMAN.—And was that signed by Senator Fall?

Mr. DOHENY.—Albert B. Fall.

Senator PITTMAN.—Do you know his signature?

Mr. DOHENY.—I think I do, yes.

Senator PITTMAN.—And it was brought to you by your son?

Mr. DOHENY.—By my son; yes, sir.

Senator PITTMAN.—And you have testified that you expected it would be paid, probably, by

your employing Senator Fall and taking it out of his salary?

Mr. DOHENY.—In case he did not find it possible to pay it out of the profits of the property; in case he was not able to repay it in any other way.

Senator PITTMAN.—You did not expect him to go into your employ while he was Secretary of the Interior, did you?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—You were to employ him after he ceased to be Secretary?

Mr. DOHENY.—After he ceased to be Secretary of the Interior.

Senator PITTMAN.—Was there anything said with regard to him resigning as Secretary of the Interior before his term was up?

Mr. DOHENY.—Yes, sir; he often spoke of that. He often said he was not going to remain very long.

Senator PITTMAN.—Then, after these discussions as to the borrowing of the \$100,000, you had in mind that he was to perform only a few more acts of an official nature?

Mr. DOHENY.—I do not know that I had that particularly in mind. I cannot say just what came into my mind at that time.

Senator PITTMAN.—Well, you had in mind employing him and his repaying this note out of his employment?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And he had talked to you

about resigning from the job of Secretary of the Interior?

Mr. DOHENY.—Yes, sir; but I did not know how soon he would retire, whether he would stay his term out or not. We never discussed the length of time that he would remain in the Interior Department. [139—66]

Senator PITTMAN.—But you did expect him to pay this note some day out of his employment, possibly?

Mr. DOHENY.—If he did not pay it any other way—if he found it impossible to pay it any other way.

Senator PITTMAN.—Then you attached some value to his note?

Mr. DOHENY.—Yes, sir; I attached \$100,000 value to it.

Senator PITTMAN.—Where do you keep your notes and properties of that kind?

Mr. DOHENY.—I keep most of them in Los Angeles, except such as are developed in New York. Those are in New York.

Senator PITTMAN.—You have made a search for this note in Los Angeles?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And it is not there?

Mr. DOHENY.—Yes; we made a hurried search in Los Angeles before we started here and did not find it.

Senator PITTMAN.—The transaction started in New York?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And that is where you keep that kind of things, in New York?

Mr. DOHENY.—Some things. We do not keep all of those things there.

Senator PITTMAN.—Have you seen that note since it was delivered to you by your son?

Mr. DOHENY.—Yes.

Senator PITTMAN.—When?

Mr. DOHENY.—Oh, I have seen it more than once, I think.

Senator PITTMAN.—Where were you when you saw it more than once?

Mr. DOHENY.—Well, I saw it in New York.

Senator PITTMAN.—More than once in New York?

Mr. DOHENY.—Yes; more than once in New York.

Senator PITTMAN.—And whereabouts was it being kept when you saw it?

Mr. DOHENY.—It was being kept right in this book. (Exhibiting a pocketbook.)

Senator PITTMAN.—How long did you keep it in that book?

Mr. DOHENY.—I kept it in that book until, I think, we got back to Los Angeles; but then I have an idea now that we may have put it in the Guaranty Trust or one of our safe-deposit boxes in New York.

Senator PITTMAN.—Do you carry many notes that length of time in your pocketbook?

Mr. DOHENY.—Yes; quite a few of them.

Senator PITTMAN.—That length of time?

Mr. DOHENY.—I have not said what length of time.

Senator PITTMAN.—How long did you keep this note of Senator Fall's in your pocketbook?

Mr. DOHENY.—I do not know. I presume I kept it—my thought is that I kept it until we got back to Los Angeles.

Senator PITTMAN.—Have you a safe-deposit box, or more or several, in Los Angeles?

Mr. DOHENY.—Yes.

Senator PITTMAN.—Do you keep your notes in any particular place there?

Mr. DOHENY.—I do not know that we do. Most of my notes are turned over to Mr. Ritter, our private accountant there.

Senator PITTMAN.—Have you lost many notes in the last few years?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—Did you ask Mr. Ritter to assist in searching for those notes in Los Angeles?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—Who else did you ask to help in searching for those notes in Los Angeles?

Mr. DOHENY.—I asked my son and my wife.

Senator PITTMAN.—And did they assist you?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And you did not find it?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—You realized that this committee would like to see that note?

Mr. DOHENY.—Yes, sir. [140—67]

Senator PITTMAN.—And you have made a sincere search for it?

Mr. DOHENY.—Yes, sir; and I am going to produce the note.

Senator PITTMAN.—That is exactly what I am getting at. How long do you think it will be before you produce the note?

Mr. DOHENY.—As soon as I get back to Los Angeles, or if it is in New York, I will get it when I get there. Because the note is not lost; I have not lost any notes.

Senator PITTMAN.—That is the reason I am getting at that. Your evidence so far has indicated that it is not in Los Angeles.

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And it is not very far from here to New York?

Mr. DOHENY.—That is right.

Senator PITTMAN.—And as it is a question that has naturally aroused some suspicion—I do not mean your testimony, but the matter of this note. There have been several notes, you know, flying around before the committee. They would like to see the note.

Mr. DOHENY.—Yes, sir.

SENATOR.—And as one member of the committee, I hope that before the session is over, you

can find it without having to go to Los Angeles for it.

Mr. DOHENY.—I may have to go there; I do not know.

Senator STANFIELD.—Mr. Doheny, did it not occur to you at the time you were making this loan to Mr. Fall, that if the public should become cognizant of the fact that you were making such a loan you might be misjudged, or Mr. Fall might be misjudged? And did not that prompt you to send money to Mr. Fall in cash rather than transmit it through the banks, as in the ordinary course of business?

Mr. DOHENY.—I am not quite certain whether I was prompted by any opinion of my own, or whether I did it at the request of Senator Fall. Of course, I might have been influenced by some such thought.

Senator STANFIELD.—Does it not seem to you that it should occur to a man whose relations to the Government were such as yours were that you would be so discreet that you would not want that to become public, being a friendly act on your part, and a personal act as between you and Mr. Fall and that you would not want to take the chance?

Mr. DOHENY.—Usually I am not very discreet. I do things offhand without thinking of the consequences.

Senator STANFIELD.—Well, it does seem to me, and I dare say it does to many others, that it was an unusual procedure for you to send that in money

rather than transmit it in a draft in the ordinary course of business, and I am trying to get it clear in my mind if you did it that way because it was a matter of discretion and you did not want any reflection on Mr. Fall.

Mr. DOHENY.—I don't know whether I was influenced by any matter of discretion or whether I was influenced by a request from Mr. Fall to send it in cash.

Senator SMOOT.—Mr. Doheny, when Secretary Fall was discussing the question of the amount of the loan, did he tell you the amount of money that he would have to raise to carry out the improvements that he had in contemplation?

Mr. DOHENY.—No. He told me he would have to have about \$100,000 to purchase this ranch and to take care of it. Whether the price was \$100,000 merely I did not gather from him, but that amount of money was going to relieve him of—not of this necessity, but it was going to satisfy his ambition, possibly, to own that land.

Senator SMOOT.—He did not tell you that he had sold a paper for \$45,000, did he?

Mr. DOHENY.—No, sir.

Senator SMOOT.—He never mentioned the fact that he had received the \$45,000 for the paper he sold?

Mr. DOHENY.—No, sir; he did not tell me about that, Senator Smoot.

Senator DILL.—Coming back to this stock transaction, have you had dealings with banks in New

York or Los Angeles in connection with stocks of this company?

Mr. DOHENY.—Well, I occasionally have; not very often, though. We do not speculate in our stocks at all.

Senator DILL.—What brokers in New York handle your business?

Mr. DOHENY.—Blair & Co.—not brokers, just bankers. I have never had any dealings with a broker in my business. [141—68]

Senator DILL.—Not in Los Angeles?

Mr. DOHENY.—Never had any dealings in Los Angeles.

Senator DILL.—And only Blair & Co. in New York?

Mr. DOHENY.—Only Blair & Co. in New York.

The CHAIRMAN.—Do Blair & Co. do anything other than a banking business for you?

Mr. DOHENY.—Yes—no; that is all they do. They handle bonds and stocks for us. They usually undertake to form a syndicate to write up our bond issues, and if we have a block of stock for sale—I don't think we have ever sold any blocks of stock through Blair except just some transaction that I engaged in in the summer of 1921.

The CHAIRMAN.—Then they do represent you both as bankers and in the handling of your securities?

Mr. DOHENY.—Yes; absolutely. They are the only people who handle any of my personal securities or those that I have control over.

The CHAIRMAN.—Now, won't you tell us a little more in detail about the ownership of these contracts? You organized the Pan American Co.?

Mr. DOHENY.—Yes, sir. I organized the Pan American Petroleum & Transport Co., which is the company that owns the stock of the California Co. The Pan American Petroleum Co. of California I also organized.

The CHAIRMAN.—What company did you organize for the purpose of taking over these contracts?

Mr. DOHENY.—None.

The CHAIRMAN.—It was an existing corporation?

Mr. DOHENY.—An existing corporation.

The CHAIRMAN.—And that was which one?

Mr. DOHENY.—The Pan American Petroleum Co. of California.

The CHAIRMAN.—Did the Pan American Petroleum & Transport Co. own all of the stock of the Pan American Petroleum Co. of California?

Mr. DOHENY.—Yes, sir; and still does.

The CHAIRMAN.—Of the Pan American Petroleum & Transport Co. you own or control the majority, and there are about 9,000 stockholders. Is that correct?

Mr. DOHENY.—About 9,000. Yes; I own a controlling interest in the voting stock of the company. I merely control the company through being able to elect a majority of the board of directors. I control that, because my family owns the control of it.

My own interest in the company would probably amount to about 8 or 9 per cent, and my family's interest, all told, to about 27 per cent.

The CHAIRMAN.—One other question. Did it occur to you, Mr. Doheny, that there was any impropriety in loaning money to an officer of the Government with whom you had very large business transactions?

Mr. DOHENY.—No, sir; it did not. And it does not now, Senator, with all due respect to your question. If I were limited in my lendings of money to people with whom I had no connection I would have to hunt up some agent to find objects of charity to give it to. I do not lend any money to anybody except those I am associated with and that I know through old friendship. I have an army of old prospectors, nearly every name on the calendar, that are hunting around in my place to get money from me. They do not get it because they are entitled to it, because they have anything I am after; they get it because of old friendship. And I lend money in quantities that would surprise some of you gentlemen here if you knew it, and that \$100,000 I loaned to Mr. Fall at that time was not an extraordinary thing at all to me.

The CHAIRMAN.—I do not think you get the point I have in mind. Did it occur to you that there was any impropriety—

Mr. DOHENY.—No; I am saying it did not.

The CHAIRMAN.—(Continuing.) In lending money to an officer of the Government with whom

you had large business transactions that might put him under obligations to you?

Mr. DOHENY.—No, sir; for the reason that I never did business directly with him. He dealt with the subordinate officers of our company. And they did not deal with him directly; they dealt with the subordinate officers of his department. And my opinion was, as it is now, that the relation between Mr. Fall and me, or between myself and any other Cabinet officer, or any other man in that position, could be of as close a character as possible without its influencing the result of the negotiations between his subordinates and my subordinates.” [142—69]

(Mr. Doheny having been excused as a witness before the Senate Committee, reappeared before that committee February 1, 1924, whereupon there was read in his presence to the committee letter dated November 28, 1921, Exhibit 33 herein, and the report of the said proceedings as put in evidence at the trial of this case proceeds as follows:)

“The CHAIRMAN.—Mr. Doheny, will you come forward, please. He was sworn before.

Senator WALSH.—Yes, Mr. Doheny has been sworn. Mr. Doheny, do you care to make any further statement?

Mr. DOHENY.—Yes, sir; I came to-day prepared to make a statement with regard to the note which I got from Mr. Fall when I loaned him the \$100,000. I brought with me all of that note that is in my possession at the present time. I had the entire note in my possession in December, 1921, and my wife

and I on the eve of our departure for California were going through some papers, and I found this note in my pocketbook, and I remarked to her that inasmuch as I had made this loan to Mr. Fall to help him out of a difficulty, it would not much help him out of a difficulty if anything happened to us and the note became the property of executors; it would mean that he would be pressed upon for the payment of it, and that the note instead of being a service to him would be an injury, so I divided the note in two parts. I gave her one part to keep, and I have the other part here to present to the committee (handing paper to Senator Walsh).

Senator WALSH of Montana.—Mark this as an exhibit.

(The paper referred to was marked by the Reporter, "Doheny Exhibit February 1, 1924, F. A. C.")

Senator WALSH of Montana.—I will read it.
(Reading:)

\$100,000.

Washington, D. C., November 30, 1921.

On demand after date I promise to pay to the order of E. L. Doheny One Hundred Thousand Dollars, New York City or Los Angeles, California, value received, with interest.

Something else in the blank, but it is torn.

(Senator Walsh started to hand the paper to the Chairman.)

The CHAIRMAN.—Hand it around.

(Senator Walsh handed the paper to Senator

Adams, and it was then examined in turn by each of the committee members present.)

Mr. DOHENY.—The remainder of the note, I believe, is in California, in Los Angeles, and that was what I had in mind when I told the committee that I expected to find it there. I searched for it in New York, as I stated to the committee that I would, but I failed to find it there. I went to the private box that Mrs. Doheny and I have access to, and in which we keep such papers as that, and the fragment was not there.

Senator WALSH of Montana.—Mr. Doheny, the other fragment consists of the signature to the note?

Mr. DOHENY.—Yes, sir.

Senator WALSH of Montana.—And practically only the signature?

Mr. DOHENY.—Only the signature.

Senator WALSH of Montana.—Now, which part did you keep and which part did Mrs. Doheny keep?

Mr. DOHENY.—I kept the piece that you have in your hand. Mrs. Doheny took the signature.

Senator WALSH of Montana.—In whose handwriting is this note?

Mr. DOHENY.—I believe it to be in Secretary Fall's handwriting.

Senator WALSH of Montana.—I understood, Mr. Doheny, that this note was brought back to you by your son?

Mr. DOHENY.—Yes, sir. * * *

Senator WALSH of Montana.—Well, Mr. Doheny, will you just explain how you thought that

transaction would operate with this part of the note in your possession, and the signature to it in the possession of Mrs. Doheny?

Mr. DOHENY.—With the entire note in the possession of my family, whenever we wanted to collect the note we had the note to show that the money was due on [143—70] the note, but if it should happen to go into the hands of our executors, in case something happened to us, they would not be able to press Mr. Fall and make the loan an injury instead of a help to him.

Senator WALSH of Montana.—Yes. And where was it that this conversation took place between you and your wife?

Mr. DOHENY.—This transaction took place in the Plaza Hotel, in our rooms at the Plaza Hotel, just prior to our departure for the Pacific coast.

Senator WALSH of Montana.—And when was that with reference to the date of the note?

Mr. DOHENY.—That was about two weeks or three weeks after the note was made, after I received the note.

Senator WALSH of Montana.—Well, did you or did you not have that circumstance in mind when you were on the stand before, Mr. Doheny?

Mr. DOHENY.—Yes, sir; I had that circumstance in mind when I was on the stand before.

Senator WALSH of Montana.—Was there any reason why you did not disclose it at that time?

Mr. DOHENY.—The reason was because I could not present the note. That is not the note. That

is only a part of the note. And I believed then, as I believe now, that I can produce the entire note, and I undertook to do it in New York. Failing to find the rest of it in New York, I believed that it was a good idea to come and present what I had, and to make—to continue the search in Los Angeles for the remainder of the note, which we now know must be in California, in Los Angeles.

Senator WALSH of Montana.—That is all.

The CHAIRMAN.—Why did you not tell us all that was in your mind at that time, Mr. Doheny? Could you not have just as well told us that fact then as you did now?

Mr. DOHENY.—Well, I believed that I would be able to produce, as I still believe, the entire note.

The CHAIRMAN.—Well, supposing you had, why could you not have told us all the facts that were in your mind at that time?

Mr. DOHENY.—I suppose I was looking at it from a different point of view than you do, Senator.

The CHAIRMAN.—Well, what different point of view?

Mr. DOHENY.—I thought that the wisest thing to do was to produce the entire note, and not produce a part of the note, which might add to the suspicions which you folks already entertain, and which the world entertains, that this is a crooked transaction.

The CHAIRMAN.—But you knew at that time that you could not have produced the note intact; it would have been in two pieces?

Mr. DOHENY.—Yes; but it would have been a note in two pieces just the same as a torn ten dollar bill is a bill, if *torn* in two pieces.

The CHAIRMAN.—But you would have had to make the same explanation of why it was in two pieces, would you not?

Mr. DOHENY.—Yes.

The CHAIRMAN.—Now, Mr. Doheny, your purpose then was if anything happened to you and Mrs. Doheny that this \$100,000 should be a gift to Mr. Fall?

Mr. DOHENY.—No; my purpose was that he should not be pressed for the payment until he was able to pay it.

The CHAIRMAN.—Well, if anything happened to you or Mrs. Doheny how could he ever be pressed for payment after what you had done to the note?

Mr. DOHENY.—If anything happened to us the two fragments of the note would still remain in our possession, wherever we were with our bodies, if we were in a railroad wreck, and our heirs, my son would have gotten hold of the pieces and he would have known what they meant, but executors wouldn't; they would force the payment of the note upon him. My son knew that the note was given for the money, and he knew it was Mr. Fall's intention to pay the note, and we believed that he could get a new note from Mr. Fall by asking for it. That is what is in my mind, that he could have gotten a new note by *saying* to Mr. Fall, "The note that

you gave to my father was lost when they were in that wreck, and we want a new note for it," and we believed that Fall would give him a new note, and in case we were all killed in a wreck, why of course it, would have been a legacy to him.

The CHAIRMAN.—Have you produced the check, Mr. Doheny?

Mr. DOHENY.—I have sent for the check and there is a man on the way with [144—71] it from Los Angeles. I think he will arrive to-morrow. At least, we wired to-day to know who was sent with it. We telephoned them on last Tuesday to send the check, and to send some books, so that we could see what entries were made indicating that this note was in our—was taken account of in our records over there. My wife has some private entries that she makes in her own book. She thinks that there is an entry of this note made in those books, made in 1921.

The CHAIRMAN.—But you say the check is in California.

Mr. DOHENY.—The check is in California, and will be here probably to-morrow.

The CHAIRMAN.—Did we not understand from you that you had searched for both the check and the note in California before you came here?

Mr. DOHENY.—No, sir; you didn't understand that from me; and if you did you misunderstood, because the check I always knew was in existence.

The CHAIRMAN.—Well, why did you not bring that check with you when you came from California?

Mr. DOHENY.—Well, I don't know—I wasn't subpoenaed to bring any check.

The CHAIRMAN.—Why, Mr. Doheny, you came here to tell this committee that you had loaned Mr. Fall \$100,000 two years ago last November.

Mr. DOHENY.—Yes, sir; a year ago—two years ago last November.

The CHAIRMAN.—And you knew at that time that you had the check evidencing the loan, or evidencing your drawing the money with which you made it, in your possession in California before you started east?

Mr. DOHENY.—No; I didn't have it in my possession, Mr. Lenroot. Before we get any further misunderstanding on this let me tell you. First, I borrowed that money from my son. It was his check that was in California.

The CHAIRMAN.—You borrowed the money from your son?

Mr. DOHENY.—I borrowed the money from my son, and I repaid the money to him with two checks. My account wasn't large enough to produce the money that I was going to loan him, so I repaid him with two checks.

The CHAIRMAN.—Did you tell us that the other day?

Mr. DOHENY.—No, sir.

The CHAIRMAN.—Why not?

Mr. DOHENY.—Well, I wasn't asked about it.

The CHAIRMAN.—Wasn't asked about it?

Mr. DOHENY.—No.

The CHAIRMAN.—Did you not come here with a voluntary statement, Mr. Doheny, purporting to tell all the facts in connection with this matter?

Mr. DOHENY.—Mr. Lenroot, I came here and I told you what I have told you. What I have told you is the truth. What I am telling you now is the truth. Why I did not tell you the other day I am not prepared to state now. I don't know just why I didn't tell you more than I did the other day, except that I thought I was telling you all that you asked for the other day.

The CHAIRMAN.—I had supposed that you undertook to give us all the facts, whether questions were asked or not. In view of that I would like to have you, now, Mr. Doheny, begin at the beginning and tell us the whole story as you now remember it, omitting nothing.

Mr. DOHENY.—The whole story with regard to the loan?

The CHAIRMAN.—Yes, sir.

Mr. DOHENY.—Well, some time along in the summer of—or late in the fall of—1921 Mr. Fall let me know, through conversations, that he was desirous of purchasing a certain piece of land adjoining his ranch in California which would complete his land holdings.

The CHAIRMAN.—Where were those conversations held, Mr. Doheny?

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Mr. DOHENY.—In Washington. He told me, I think the amount of the land, the acreage of the land, and the fact that the water from that land, was needed to complete the—to supplement the water on his own land in order to make it a good cattle range or to make it a complete ranch for the purpose that he wanted it. And also he indicated to me at that time that he had been talking to Mr. McLean about the ranch, and that McLean had thought about buying the land, and letting Fall have an option on it, or of putting the money up to buy it and taking a mortgage on it, something of that sort. As a result of that talk, and the talk about his poor condition, and in view of our old friendship, I offered to loan Fall the money on his note. And I loaned him the money; on the 30th day of November I sent him the money.

The CHAIRMAN.—Now, give us all the facts in connection with how you came [145—72] to make it on that particular day.

Mr. DOHENY.—Well, on the 30th of November, I think it was, or the 29th of November, or some other day, Fall called me up by telephone—I was in New York, and he was here—and he said to me that he was prepared now to receive that loan, to make that loan if I was willing to make it. And I talked to him something about how he wanted the money, and the result was that I sent the money to him by my son, who got it from Blair & Co.'s bank on his own check, on his own account, and he brought it over and gave it to Mr. Fall. My son

came back the next day and brought back this note, a part of which you have before you here, and handed it to me. I kept that note in this book that I still have in my pocket, and in which I carry occasionally notes and checks ready for deposit or for safekeeping, and before I went to California I called my wife's attention to it, and severed the note in two parts so that she might have one part and I have the other part in case anything happened to us enroute which might result in the loan being an injury to Mr. Fall rather than a help to him.

* * *

The CHAIRMAN.—Well, now, did you cash the check?

Mr. DOHENY.—I had it cashed, which amounts to the very same thing.

The CHAIRMAN.—I thought *you* son cashed it? It was your son's check?

Mr. DOHENY.—My son did cash it. It was his own check. My son did cash the check.

The CHAIRMAN.—His own check, not yours?

Mr. DOHENY.—His check; yes, sir.

The CHAIRMAN.—Why did you not tell us the other day?

Mr. DOHENY.—You are drawing nicer distinctions in the use of language than I am accustomed to drawing, Mr. Lenroot.

The CHAIRMAN.—Do you think we would understand otherwise than that it was you own check that you got cashed, Mr. Doheny?

Mr. DOHENY.—I propose to bring you the

check and to tell you just exactly what was cashed.

The CHAIRMAN.—Well, now, where is your son's check?

Mr. DOHENY.—My son's check is on the way here from Los Angeles.

The CHAIRMAN.—Your son's check and your two checks that you gave to him?

Mr. DOHENY.—Yes; in repayment of the loan.

The CHAIRMAN.—Why did you not bring your son's check for this \$100,000 when you knew that that was the subject that you were going to testify to?

Mr. DOHENY.—Well, I didn't think it was necessary.

The CHAIRMAN.—Are there any other questions on this branch? I wish to interrogate him on some other matters.

Senator ADAMS.—Mr. Doheny, I wanted to ask you how this note was kept in your safety deposit box. Was it with other notes, other securities?

Mr. DOHENY.—Yes, sir.

Senator ADAMS.—Was it in a separate envelope?

Mr. DOHENY.—I don't remember as to that. I think it was in a separate envelope.

Senator ADAMS.—Any notation on the outside of it?

Mr. DOHENY.—I don't remember as to that.

Senator ADAMS.—And when did you get this fragment?

Mr. DOHENY.—When did I get this fragment?

Senator ADAMS.—Yes.

Mr. DOHENY.—I got this fragment last—out of my safe deposit last October or November.

Senator ADAMS.—Where has it been since that time?

Mr. DOHENY.—It has been in my pocket.

Senator ADAMS.—You did not have it in your pocket when you came before the committee?

Mr. DOHENY.—Yes, I did.

Senator ADAMS.—Oh, you had it with you at that time?

Mr. DOHENY.—Yes, sir.

Senator ADAMS.—And so that when you said to us that the note was in New York, you thought, or possibly in Los Angeles, and that you would get it, you were not quite telling us the fact?

Mr. DOHENY.—I wasn't telling you all the facts, but I was telling you that the thing which completed the note, which made the note—the signature is what makes the note—and I thought it was in New York or in Los Angeles, and that I would produce the note. [146—73]

Senator ADAMS.—You did tell us that you had for a long while carried that note in that pocket-book of yours?

Mr. DOHENY.—Yes, sir.

Senator ADAMS.—And that then you had put it either in your safety deposit box in New York or in Los Angeles.

Mr. DOHENY.—Yes, sir.

Senator ADAMS.—As a matter of fact, the note was not in your safety deposit box in either New York or Los Angeles at the time?

Mr. DOHENY.—The essential part of the note still is in Los Angeles.

Senator ADAMS.—The signature part?

Mr. DOHENY.—The signature part; yes.

Senator ADAMS.—That is the only note you have of Senator Fall's.

Mr. DONENY.—Yes, sir. * * *

Senator ADAMS.—So there was no entry made on your personal accounts at that time in reference to this note or the money that you sent to Secretary Fall?

Mr. DOHENY.—No, sir.

Senator DILL.—I didn't get clearly the date when this note was torn apart, the signature torn off.

Mr. DOHENY.—It was some time about the middle of December.

Senator DILL.—Which year, this year?

Mr. DOHENY.—1921.

Senator DILL.—1921?

Mr. DOHENY.—Yes, sir.

Senator DILL.—That is just a few days after the note was made?

Mr. DOHENY.—Yes, sir.

Senator DILL.—Have you seen that torn-off signature part since that time?

Mr. DOHENY.—Yes, sir.

Senator DILL.—How often have you seen it?

Mr. DOHENY.—Well, I haven't seen it but once since, I think. That was in Los Angeles. That is my impression, that it was in Los Angeles. It might have been, possibly, in New York.

Senator DILL.—Was that immediately after you arrived there, or just before you came here?

Mr. DOHENY.—Well, I haven't any memory as to the exact date when I might see a signature on a note.

Senator DILL.—Is it the custom of you and Mrs. Doheny to tear the signature off the notes that are given to you?

Mr. DOHENY.—No, sir; it is not customary.

Senator DILL.—Have you done that with any other note?

Mr. DOHENY.—No; I don't think we have. I don't think we have ever loaned any other money under just these circumstances when we were afraid that the party to whom we loaned it might be put in an unfortunate or injurious circumstance by the collecting of it.

Senator DILL.—That is all.

Senator PITTMAN.—Mr. Doheny, you had in mind by tearing off the signature of the note, that if it fell in the hands of your executors it could not be identified as an obligation of Senator Fall?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—Was there no other way that you could think of by which you could protect Senator Fall than by destroying this evidence?

Mr. DOHENY.—There was no other way that I adopted, Mr. Pittman.

Senator PITTMAN.—I didn't ask you that, because it is apparent that that is what you adopted.

Mr. DOHENY.—What difference does it make now if I could have thought of any other way of doing it? I did it this way. This thing is done.

Senator PITTMAN.—Could you not have provided in your will that this should be considered as a legacy to Senator Fall?

Mr. DOHENY.—Oh, I might have provided in my will if I had had time to make the will before I went on the train after we prepared to go west.

Senator PITTMAN.—Could you not have taken it to a trust company and arranged a contract by which there would be an extension of this subsequent to your death?

Mr. DOHENY.—It might have been done in a dozen different ways, and every one better than this, but this is the one I adopted, Senator Pittman.
[147—74]

Senator PITTMAN.—Now, you realized when you were on the stand before, Mr. Doheny, did you not, that to avert any suspicion as to whether there was such a thing as a note at all that this committee were very anxious to see the evidence that there was a note? Is not that a fact?

Mr. DOHENY.—I wish you would give me that question again.

Senator PITTMAN.—You were aware of the fact

from the character of the questions asked you at the last examination that the committee were anxious to know whether there ever was a note executed, and they wanted to see the instrument?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—You knew that, did you not?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And you realized, did you not, that you were sworn not only to answer truthfully the questions asked you, but that you were to tell us the whole truth about this note? Did you understand that?

Mr. DOHENY.—In answer to questions, yes.

Senator PITTMAN.—Not alone in answer to questions, but that you were to tell the whole truth about this thing, that is what you were sworn to do. Do you understand now that you are to tell the whole truth and not conceal any of the truth?

Mr. DOHENY.—I understand that I am to tell the whole truth in answer to any questions that are asked me, but I am not supposed to tell the truth about things that do not concern the committee, or that might be connected with it by some other mind than mine, and in this particular connection I had intended to and did tell you the truth about the note. I said that the note was not in my possession, and is not in my possession yet, and I am here voluntarily to-day, although I was subpoenaed last night, to produce that part of the note which I have, and to tell you that I expect to get the remainder

of the note when I go back to California, and that the whole note will then be before the committee if it is possible to find the remainder of it.

Senator PITTMAN.—Now, Mr. Doheny, you understand that you were sworn to tell the whole truth, do you not, about any transactions concerning which you were testifying? You were asked by Senator Walsh to tell all about this loan, and the execution of that note, and about what became of the note. Did you tell all that you knew about it?

Mr. DOHENY.—I don't know that I was asked all of those questions that you speak of.

Senator PITTMAN.—Well, if you were asked that question then you did not tell the whole truth? Get down to that.

Mr. DOHENY.—If I was asked those questions I did not tell you about the note that I had in my pocket, and which was mutilated by the signature being torn off.

Senator PITTMAN.—Well, if you were asked by any member of the committee to tell all about this loan and that note, then you did not tell the whole truth, did you?

Mr. DOHENY.—Are you trying to get me to admit that I lied about it? Because there is no use; if I lied about it, I lied about it. I don't need to admit it to you. It is in the evidence, whatever I said, and my admitting it doesn't make any difference in this testimony at all.

Senator PITTMAN.—No, I am trying to see if you are as innocent as you are pretending to be.

Mr. DOHENY.—Well, I am quite sure that when I was here before, Mr. Pittman, that you were going to be disappointed when I produced the note.

Senator PITTMAN.—I have no doubt about it. I want to read a little of that examination to show how disappointed I am.

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—I have tried to make it very plain to you, Mr. Doheny—

Mr. DOHENY.—(Interposing.) That you didn't believe me.

Senator PITTMAN.—Yes.

Mr. DOHENY.—And you did make it very plain to me that you didn't believe me.

Senator PITTMAN.—Yes, I did.

Mr. DOHENY.—And this evidence here proves that you were wrong and I was right.

Senator PITTMAN.—Well, we will find out whether it proves it.

Mr. DOHENY.—Very well.

Senator PITTMAN.—It was known that this committee was suspicious about the very existence of the note.

Mr. DOHENY.—Yes, I know that. [148—75]

Senator PITTMAN.—At least, I was suspicious.

Mr. DOHENY.—I know that, and that is why I hurried back here to bring the part of the note that I had to allay those suspicions. That is why I hurried back, so as to produce the mutilated part of the note just to allay those suspicions.

Senator PITTMAN.—You hurried back here, Mr.

Doheny, to allay the suspicion, and yet, knowing that there were suspicions, you had the note in your pocket, and you could have reached in your pocket and pulled it out to allay those suspicions, just as you have done now.

Mr. DOHENY.—You are saying that. I am not saying it.

Senator PITTMAN.—Is not that true?

Mr. DOHENY.—I thought I could produce the whole note.

Senator PITTMAN.—Is not that true, though?

Mr. DOHENY.—I thought I could produce the whole note.

Senator PITTMAN.—But you hurried back to produce this?

Mr. DOHENY.—This is not the whole note that is in my possession, but I brought it to allay suspicion.

Senator PITTMAN.—To allay suspicion. And yet you could have allayed suspicion by reaching in your pocket and pulling it out?

Mr. DOHENY.—Could I?

Senator PITTMAN.—Well, I agree with you. I will agree that with the signature torn off that you have not quite allayed the suspicion.

Mr. DOHENY.—That was the impression that I was under, that with the signature torn off it would not allay suspicion, and that I would go to New York and try to see if I could find it in a place there where my wife and I thought we could find it. We went over there, and we went through my safe deposit box with the greatest care, and

we found out it was not there, and then we made up our mind to come back and deliver as much as we had, and we concluded that we could get word from California to see where the remainder of it was.

Senator PITTMAN.—Now let us see what was testified to the other day, to see if you told the whole truth or not (reading):

“Senator PITTMAN.—Then you attached some value of his note?

Mr. DOHENY.—Yes, sir; I attached \$100,000 value to it.

Senator PITTMAN.—Where do you keep your notes and properties of that kind?

Mr. DOHENY.—I keep most of them in Los Angeles, except such as are developed in New York. Those are in New York.

Senator PITTMAN.—You have made a search for this note in Los Angeles?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And it is not there?

Mr. DOHENY.—Yes; we made a hurried search in Los Angeles before we started here and did not find it.

Senator PITTMAN.—The transaction started in New York?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And that is where you keep that kind of things, in New York?

Mr. DOHENY.—Some things. We do not keep all of those things there.

Senator PITTMAN.—Have you seen that note since it was delivered to you by your son?

Mr. DOHENY.—Yes.

Senator PITTMAN.—When?

Mr. DOHENY.—Oh, I have seen it more than once, I think.

Senator PITTMAN.—Where were you when you saw it more than once?

Mr. DOHENY.—Well, I saw it in New York.

Senator PITTMAN.—More than once in New York?

Mr. DOHENY.—Yes; more than once in New York.

Senator PITTMAN.—And whereabouts was it being kept when you saw it?

Mr. DOHENY.—It was being kept right in this book.

Senator PITTMAN.—How long did you keep it in that book?

Mr. DOHENY.—I kept it in that book until, I think, we got back to Los Angeles but then I have an idea now that we may have put it in the Guaranty Trust or one of our safe-deposit boxes in New York.

Senator PITTMAN.—Do you carry many notes that length of time in your pocketbook?

Mr. DOHENY.—Yes; quite a few of them. [149—76]

Senator PITTMAN.—That length of time?

Mr. DOHENY.—I have not said what length of time.

Senator PITTMAN.—How long did you keep this note of Senator Fall's in your pocketbook?

Mr. DOHENY.—I do not know. I presume I

kept it—my thought is that I kept it until we got back to Los Angeles.

Senator PITTMAN.—Have you a safe-deposit box, or more or several, in Los Angeles?

Mr. DOHENY.—Yes.

Senator PITTMAN.—Do you keep your notes in any particular place there?

Mr. DOHENY.—I do not know what we do. Most of my notes are turned over to Mr. Ritter, our private accountant there.

Senator PITTMAN.—Have you lost many notes in the last few years?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—Did you ask Mr. Ritter to assist in searching for those notes in Los Angeles?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—Who else did you ask to help in searching for those notes in Los Angeles?

Mr. DOHENY.—I asked my son and my wife.

Senator PITTMAN.—And did they assist you?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And you did not find it?

Mr. DOHENY.—No, sir.

Senator PITTMAN.—You realized that this committee would like to see that note?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And you have made a sincere search for it?

Mr. DOHENY.—Yes, sir; and I am going to produce the note.

Senator PITTMAN.—That is exactly what I am

getting at. How long do you think it will be before you produce the note?

Mr. DOHENY.—As soon as I get back to Los Angeles, or if it is in New York I will get it when I get there. Because the note is not lost; I have not lost any notes.

Senator PITTMAN.—That is the reason I am getting at that. Your evidence so far has indicated that it is not in Los Angeles.

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And it is not very far from here to New York?

Mr. DOHENY.—That is right.

Senator PITTMAN.—And as it is a question that has naturally aroused some suspicion—I do not mean your testimony, but the matter of this note. There has been several notes, you know, flying around before the committee. They would like to see the note.

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And as one member of the committee, I hope that before the session is over you can find it without having to go to Los Angeles for it."

Senator PITTMAN.—Now, Mr. Doheny, after that examination and those answers, do you think that having that note in your pocket which you have this date produced, that you were telling the whole truth to this committee?

Mr. DOHENY.—My dear sir, I am not here attempting to answer questions as to whether I told the truth or not. I am here to answer questions as

to the note I received from this loan, and that is no evidence before this committee as to whether I told the truth then or not. I told the truth then as I saw it, and I tell the truth now as I see it. I have got the note Fall gave for that loan, if it is in fact a note without the signature. I had that with me when I was before the committee before. I didn't produce it at that time because I thought I could produce a note in the form that would allay suspicion. I could not produce the whole note, until I got back to California, if I can at all, so I produced what I have got for what good it will do. This note is there for whatever influence it will have on this committee's mind. That note was sent to me by Mr. Fall through my son. It is the note for what I loaned him; that is all there is to it. All your questions cannot make me admit that I purjured myself, Senator. [150—77]

Senator PITTMAN.—Where did you keep this note that the signature is torn off of that is introduced in evidence?

Mr. DOHENY.—Where did I keep it?

Senator PITTMAN.—Yes.

Mr. DOHENY.—Kept it in Los Angeles part of the time, and part of the time in my pocketbook.

Senator PITTMAN.—You brought it on from Los Angeles at the time you came here to testify?

Mr. DOHENY.—Yes, sir; and I tried to find the remainder of it if I could. As I stated in my testimony—maybe I didn't make it clear, that the remainder was what I was looking for, and the sig-

nature is what makes the note, and in my opinion that was a fair answer under the circumstances.

Senator PITTMAN.—Now you testified that you kept this part of the note?

Mr. DOHENY.—Yes.

Senator PITTMAN.—And that your wife kept the signature?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And that your wife made a search in Los Angeles for the note?

Mr. DOHENY.—For the signature—for the note. For the signature; the signature is what makes the note.

Senator PITTMAN.—And while you were in Los Angeles with your wife you had this part of the note?

Mr. DOHENY.—What is that?

Senator PITTMAN.—You had this when you were in Los Angeles?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And your wife was then with you?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And she was supposed to have the signature part?

Mr. DOHENY.—Yes, sir.

Senator PITTMAN.—And you came on here for the purpose of testifying that you had made a loan to Secretary Fall, and came on with this part, without the other part?

Mr. DOHENY.—That is what I did.

Senator PITTMAN.—Did you make a careful search in Los Angeles for it or not?

Mr. DOHENY.—No, hurried search, as I stated in my testimony.

Senator PITTMAN.—Did you not consider that the signature was a very material part of that note?

Mr. DOHENY.—Indeed, I did.

Senator PITTMAN.—And you were coming on here to testify in this matter without making a careful search in Los Angeles?

Mr. DOHENY.—I came on here hurriedly, because I had made up my mind to come, and we looked for that portion of the note, and we didn't find it, so we made up our mind that in all probability it was in New York; that is why we did not make any closer search in Los Angeles.

Senator PITTMAN.—When you were on the stand before did you testify that you might have to go back to Los Angeles to get the note?

Mr. DOHENY.—Yes; to get the signature to the note, of course.

Senator STANFIELD.—Mr. Doheny, when did you repay your son the \$100,000 that he loaned you to pay to Senator Fall?

Mr. DOHENY.—I don't know just when it was. The notes will show it. It was probably a month or two afterwards.

Senator STANFIELD.—You mean the checks, not the notes?

Mr. DOHENY.—Yes, the checks will show. I paid him with one check of \$40,000, I think, and one check for \$60,000.

Senator STANFIELD.—That was near the same time that the loan was made to Secretary Fall?

Mr. DOHENY.—What is it?

Senator STANFIELD.—That was near the same time that this loan was made to Secretary Fall?

Mr. DOHENY.—Yes, within a month or afterwards.

Senator STANFIELD.—Within a few days?

Mr. DOHENY.—Yes, within a month or so afterwards.

Senator STANFIELD.—That is all. [151—78]

Senator BURSUM.—Mr. Doheny, how long have you known Secretary Fall?

Mr. DOHENY.—I have known him, I suppose, about 30—between 30 and 35 years.

Senator BURSUM.—Has your relationship been of an intimate character during this time?

Mr. DOHENY.—It was of a very intimate character in the early years, and pretty intimate during the last five years.

Senator BURSUM.—You say you loaned Mr. Fall \$100,000 in 1921?

Mr. DOHENY.—Yes, sir.

Senator BURSUM.—What was the object of making him that loan? Was it on account of friendship, or favors received, or was it on account of favors to come?

Mr. DOHENY.—Naturally it was on account of friendship. I have already testified to that. I am giving you the same answer now.

Senator BURSUM.—Prior to Secretary Fall's

taking the position of Secretary of the Interior had you had any business relations with Mr. Fall?

Mr. DOHENY.—Not business relations, but I had some very intimate relations with him concerning matters that interested the public; Mexican matters.

Senator BURSUM.—Had Fall ever rendered you any service during all of these years of your acquaintance?

Mr. DOHENY.—I think he rendered me the greatest service while he was chairman of the committee to investigate the Mexican situation. He rendered it to me and to every other person interested in Mexico of any sort that had been rendered by any public man in the United States since the Mexican situation commenced in 1910.

Senator BURSUM.—At the time that you made the loan did you consider yourself under obligations to Mr. Fall?

Mr. DOHENY.—Yes, sir; I considered myself under a great obligation both on account of friendship and on account of the service he had rendered our company and other companies.

Senator BURSUM.—At the time that you made the loan did you have in mind the obtaining of any lease or concession from the Government?

Mr. DOHENY.—No, sir.

Senator BURSUM.—Had you consulted about it?

Mr. DOHENY.—What is that?

Senator BURSUM.—Had you consulted or applied for any lease?

Mr. DOHENY.—There is a letter here to-day that is a surprise to me, that I don't remember, that has entirely left my mind, which is evidence that I knew something about a lease that the Secretary of the Navy was considering, or not a lease, but a contract that the Secretary of the Navy wanted to make regarding the building of storage at Pearl Harbor.

Senator BURSUM.—That was with the Secretary of the Navy?

Mr. DOHENY.—Yes, sir.

Senator BURSUM.—If I understood you correctly when you testified before, you stated that it was one of your hobbies to all old friends which you had known when you were poor, working in New Mexico. I will ask you if you have aided other people outside of Mr. Fall of the old-time acquaintances?

Mr. DOHENY.—Yes, sir.

Senator BURSUM.—When were you mining in New Mexico, do you know a man by the name of Mike Moffett who mined at Kingston?

Mr. DOHENY.—I knew him, yes, sir.

Senator BURSUM.—Did you loan him some money last fall?

Mr. DOHENY.—No, sir.

Senator BURSUM.—You did not?

Mr. DOHENY.—No, sir.

Senator BURSUM.—Have you loaned any money to any other friends?

Mr. DOHENY.—I have loaned some money to John Moffett, a brother to Mike Moffett.

Senator BURSUM.—A brother of Mike Moffett?

Mr. DOHENY.—A brother of Mike Moffett.

Senator BURSUM.—Was he one of the old-time miners?

Mr. DOHENY.—He was one of the old-time miners.

Senator BURSUM.—That worked with you in the eighties?

Mr. DOHENY.—Yes, sir. [152—79]

Senator BURSUM.—How much money did you loan him?

Mr. DOHENY.—I loaned him enough to buy a mine that was being sold at sheriff's sale, and in which he was interested, and which he could not raise the money to buy, and was about to lose his interest. I have forgotten how much it was now. I think about \$2,500.

Senator BURSUM.—When was this loan made?

Mr. DOHENY.—About—I don't remember; about a year ago or such a matter.

Senator BURSUM.—What security did you take?

Mr. DOHENY.—He gave me none.

Senator BURSUM.—Have you made other loans?

Mr. DOHENY.—Yes, sir.

Senator BURSUM.—In substantial amounts?

Mr. DOHENY.—Yes, sir; I loaned Billy Boyle, a prospector, whom I knew at Kingston, Ariz., in the early days, and who afterwards went up to Cripple Creek, and who later came over to Lovelocks, Nev., and then down into Arizona—he wanted to buy a mine in the Chloride district there—I have forgot-

ten the name of the mine—but I loaned him \$20,000 to buy the mine.

Senator BURSUM.—Were you repaid?

Mr. DOHENY.—Yes, sir; he sold the mine for \$75,000 and repaid me, and died a few weeks afterwards and left his widow about \$30,000 profit that he had made out of that transaction.

Senator BURSUM.—Did you take security on your loan?

Mr. DOHENY.—No, sir; no security.

Senator BURSUM.—Just took his word?

Mr. DOHENY.—Yes, sir.

Senator BURSUM.—Have you made other loans to the old timers?

Mr. DOHENY.—Yes, sir; I made a loan to C. W. Like, who used to be the general superintendent of the Chrystolite mine in Leadville in the days when Senator Adams' father was Governor of Colorado. I loaned him \$5,000 at one time, and \$3,000 at another, to open up a mine in Nevada, and unfortunately they didn't make any profit out of it, and of course I never got the money back.

Senator BURSUM.—How strong is your friendship for Mr. Fall? Supposing now that you lose your lease, that it be canceled. Mr. Fall is out of any position to do you any favor.

Mr. DOHENY.—My friendship for Mr.—

Senator BURSUM.—After that would you be willing to make him other loans?

Mr. DOHENY.—My friendship for Mr. Fall and for every other one of my friends is not measured by their financial condition or by mine. My ability

to do them service depends upon my financial condition. If Mr. Fall was out of a position to-morrow and was in a good frame of mind and physically able, he could get employment with me at work wherein he would be of service to me.

Senator BURSUM.—But suppose that he were not in a position to render you service of any kind or character, to what extent would your friendship extend toward giving him relief?

Mr. DOHENY.—Well, it would be measured by what I thought were his necessities at the time.

Senator BURSUM.—Would you make another loan of \$100,000?

Mr. DOHENY.—I don't think I would now.

Senator BURSUM.—How?

Mr. DOHENY.—I don't think I would under present circumstances.

Senator BURSUM.—That is all.

The CHAIRMAN.—Mr. Doheny, just where did this mutilation of the note take place?

Mr. DOHENY.—It took place in our rooms. I don't know near which door nor what rug we were standing on.

The CHAIRMAN.—But I mean in New York?

Mr. DOHENY.—In the Plaza Hotel in New York, in our rooms.

The CHAIRMAN.—In your rooms?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Immediately after you had gotten it?

Mr. DOHENY.—No, sir.

The CHAIRMAN.—How long afterwards? [153—80]

Mr. DOHENY.—Two or three weeks afterwards. Probably two weeks. I don't know just what date we started back to California.

The CHAIRMAN.—But before your return to California?

Mr. DOHENY.—Yes, sir; just as we were—we were contemplating our return at the time that I mutilated the note.

And Mrs. Doheny took the signature part?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—In her possession?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And kept it in her possession?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—And you took the balance of it?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Then why did you tell us, Mr. Doheny, that you kept that note in your pocket-book?

Mr. DOHENY.—Now, Mr. Lenroot, I want to be frank with you. You are asking me the most embarrassing questions; that I can't see why they concern this. I do not know why I didn't tell you and I am sorry I didn't tell you.

The CHAIRMAN.—I want to know just what was in your mind, Mr. Doheny?

Mr. DOHENY.—Well, I don't know why. I am sorry that I didn't tell you.

The CHAIRMAN.—It has been very apparent that the committee has been very greatly misled by you.

Mr. DOHENY.—I am sorry.

The CHAIRMAN.—It is of interest to this committee whether that misleading was intentional or not.

Mr. DOHENY.—Well, it is a question of whether or not I could have produced the whole note. If I could have produced the whole note you would not have been misled as much as you are now.

The CHAIRMAN.—Well, when you testified before the committee you did not consider that what you had in your pocketbook was the note?

Mr. DOHENY.—No, sir; I did not consider it the note.

The CHAIRMAN.—But when you testified that you kept the note in your pocketbook, then you thought it was the note?

Mr. DOHENY.—When I what?

The CHAIRMAN.—I say, when you testified before this committee at that time, your reason for not producing it was because you did not consider it a note?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—Am I correct?

Mr. DOHENY.—Yes, sir.

The CHAIRMAN.—But when you testified that you had had it in your pocketbook until your return to Los Angeles, you considered it was a note then?

Mr. DOHENY.—It was a note then, of course.

The CHAIRMAN.—But it was mutilated, just

(Testimony of Oscar Sutro.)

the same then as it is now, was it not, because Mrs. Doheny had the other part of it?

Mr. DOHENY.—Mrs. Doheny had the other part of it; yes sir.

The CHAIRMAN.—So if it was not a note when you had it in your pocketbook it was not a note when you took it to Los Angeles, was it?

Mr. DOHENY.—Probably you are right.

The CHAIRMAN.—One other question, Mr. Doheny. Did it occur to you that if anything happened to you, that you would not want the public to know that you had had these financial relations with Mr. Fall while he was Secretary of the Interior?

Mr. DOHENY.—No, sir.

The CHAIRMAN.—That was not a reason for the action that you took?

Mr. DOHENY.—No, sir." [154—81]

Testimony of Oscar Sutro, for Plaintiff.

OSCAR SUTRO, a witness on behalf of the plaintiff, testified that he is an attorney at law residing in San Francisco; that in 1921 and 1922 he was attorney for the Standard Oil Company of California and rendered an opinion to that Company dated January 27, 1922, which he identifies. Thereupon plaintiff offered in evidence the said opinion of the witness, plaintiff's counsel stating that the offer would be followed by proof that the substance of the opinion was brought to the attention of the Secretary of the Interior, Mr. Fall, before the contract

(Testimony of Oscar Sutro.)

(of April 25, 1922, in issue in this case) was closed, to show knowledge of the questions that were raised and to show that he had this matter called to his attention before he proceeded to make the contract. Defendants objected to the admission of said paper in evidence on the grounds that it is incompetent, irrelevant and immaterial; not admissible against the defendant companies; Mr. Fall is not a party defendant or a party litigant in the case; it is not connected in any way with, and it is not proposed by plaintiff's counsel to connect it with, or show that it was ever brought to the knowledge of, or that it in any way affected the motives or actions of, the defendant companies; that an opinion rendered to the Standard Oil Company, or any opinion that the witness might have held, with regard to the legality or illegality of the contracts in issue in this case is utterly irrelevant, immaterial, and cannot be binding as against defendants, cannot be used to aid the plaintiff, and cannot properly affect the Court's deliberations; that the fact, offered to be hereafter shown, that one of the parties to a contract in issue had this matter brought to his attention, has in no way affected the legality or illegality of his action; what witness' opinion may have been, communicated or not communicated to Mr. Fall or anyone else representing the plaintiff, is not binding upon, and neither as a matter of law nor a matter of fact could have any effect upon official actions of the plaintiff's representatives. The counsel for plaintiff replied

(Testimony of Oscar Sutro.)

that the opinion was offered not on the question of legality of the contract, but as a fact to be shown as part of the circumstances leading up to the consummation of the transaction. The Court overruled the objection and admitted the opinion of the said witness in evidence, to which ruling and action of the Court defendants duly reserved exceptions. Thereupon the paper identified by the witness was received in evidence as Plaintiff's Exhibit No. 51, and is as follows: [155—82]

PLAINTIFF'S EXHIBIT No. 51.

“January 27, 1922.

Mr. H. M. Storey,
Vice-President, Building.

Dear Sir:

I have carefully considered the question whether the Secretary of the Navy has power, under the naval appropriation bill of June 20, 1921, to exchange oil and gas products from the properties within the naval petroleum reserves for tankage for storage of Navy oil. I am clearly of the opinion that the act does not confer such authority.

The proviso to the naval appropriation bill of June 20, 1921 (41 Stat. L., pp. 813-814), reads as follows:

‘Provided, That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves as are or may be come subject to the control and use by the United States for naval purposes, and on which there are no pend-

ing claims or applications for permits or leases under the provisions of an act of Congress approved February 25, 1920, entitled "An act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said act of February 25, 1920, are not affected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed \$500,000, are hereby made available for this purpose until July 1, 1922; Provided further, that this appropriation shall be reimbursed from the proper appropriations on account of the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.'

It is my opinion that the word "exchanged" as here used authorizes the exchange of oil and gas products of the naval reserve lands for other oil and gas products. Any other construction would seem to defeat the legislative intent. For illustration, the aviation appropriation appropriates \$3,-

883,400 for aircraft. It cannot be supposed that after this appropriation is exhausted the Secretary of the Navy could exchange fuel oil from naval reserves for additional aircraft.

The second additional proviso appropriates \$500,000 'for this purpose,' which purpose includes the storage of oil. To permit the Secretary of the Navy to exchange oil for the storage would in effect authorize him to increase the amount of the appropriation made 'for this purpose.'

Furthermore, the third additional proviso directs the reimbursement of the \$500,000 appropriation 'from the proper appropriations on account of the oil and gas products from said properties used by the United States.' I take this to mean, for example, that if oil used from the naval reserve lands is used as fuel on battleships, then out of the \$10,000,000 appropriation for 'coal and other fuel for steamers' and ships' use' (41 Stat. L., p. 826), the value of the fuel oil so used shall be reimbursed to the \$500,000 fund above mentioned. If oil and gas could be exchanged for storage, the \$500,000 fund provided 'for this purpose' would have to be reimbursed under the third additional proviso above referred to, to the extent of the value of that storage, out of the same \$500,000 fund. To construe an act so as to require the reimbursement of a certain appropriation out of the same appropriation is, of course, an absurdity.

The program considered in Secretary Denby's letter of December 14, 1921, if carried out through the interposition of a contractor who would ex-

change tankage for oil upon an understanding with an oil company for the sale of the oil, would be virtually a sale of the oil and a purchase of tankage. The money value of the tankage would be determined, and I assume, would be arrived [156—83] at by bids. I assume that the money value of the oil would be determined according to its market value. To this would be added the circumstance that the oil company would have engaged to purchase the oil from the contractor. The operation in its essentials would be nothing less than the sale of the oil by the Navy, and the investment of the proceeds in storage.

Nor do I see anything in the suggestion that because the main proviso authorizes the Secretary to 'store' the oil and gas, it gives him unlimited authority 'to provide the means of storage.' Furthermore, the appropriation in the second additional proviso designates the source from which he is to provide the means of storage. If this appropriation is not sufficient, an additional appropriation should be requested, but the oil and gas products, in my opinion, cannot be exchanged in such a way as to evade the necessity of asking for such an appropriation.

There seem to be practically no precedents in the decisions on this subject. In the United States v. Steele (113 U. S. 128), an exchange of scrap material for plumbing work on naval vessels was held unauthorized and condemned as a circumvention of the law in respect to appropriations. The powers of the Secretary in that case were derived under

(Testimony of Oscar Sutro.)

a statute much narrower than the present act. In my opinion, however, this transaction would in the last analysis be tested by its true intent, and its intent would obviously appear to be to circumvent the limit placed by Congress upon Naval expenditure.

I may add that if the transaction is unauthorized, there is no statute of limitations which would bar an attack upon it. I think the plain purport of the statute is that the Secretary of the Navy shall sell the oil and convert the proceeds into the general fund, unless he exchanges it for other oil.

Therefore, I would not approve the proposed transaction.

Very truly yours,

OSCAR SUTRO." [157—84]

After the foregoing had been read to the Court the witness Sutro (over objections repeated on the grounds already stated and upon the further ground that anything witness may have said to any one regarding his opinion or regarding the validity of the contracts involved in the suit, or anything he had done, or anything said by any person not acting for the defendants, is irrelevant and as to these defendants hearsay and incompetent, which objections were overruled, to which rulings exceptions were reserved by defendants) testified that in March, 1922, he had a conversation with Assistant Secretary of the Interior Finney in the latter's office in Washington during which conversation there was discussion about the correctness of the

(Testimony of Oscar Sutro.)

witness' position as stated in the foregoing opinion, Mr. Finney's position being that the opinion of the witness was not correct, the witness maintaining in that conversation that it was; witness suggested that what the Attorney-General thought about it should be ascertained and Mr. Finney stated that the Secretary of the Interior did not consider that necessary; witness thinks he offered to take the matter up with the Department of Justice but is not definite about that; the substance of Judge Finney's answer to that suggestion, if it was made, was that the Secretary of the Interior, Mr. Fall, was satisfied with the legality of the contract and did not consider it necessary to take the Attorney-General's opinion.

Cross-examination.

Upon cross-examination witness testified that he had had some experience with practically all of the departments in Washington prior to the time referred to in his direct examination; he knew Judge Finney and had in his capacity as an attorney transacted business with Mr. Finney in his capacity as an official of the Interior Department; he was familiar with the fact that opinions of the Attorney-General are not rendered upon the request of attorneys in private practice and knew that at the time; he knew that such opinions were rendered only upon the request of the head of another co-ordinate department of the Government and so stated to Mr. Finney at the time. As to what gave rise to the rendition of the opinion of the witness

(Testimony of Oscar Sutro.)

(Exhibit No. 51) he was asked about a month or less before its date by either Mr. Kingsbury, President of the Standard Oil Company, or Mr. Storey, its Vice-President, whether a proposal, which was the proposal which led to the exchange contract, would be the basis [158—85] of a valid contract, and said he did not think so; this question was asked orally and he was not informed what gave rise to the inquiry; he thinks the proposal was sent to his office, which is in the same building with that of Messrs. Kingsbury and Storey, and he at first replied by telephone as it is not his practice to render written opinions to the company; this request for his opinion may have come to him early in January, 1922. In the conversation with Judge Finney to which witness has testified he does not think he said that he was not very positive in his opinion as regards the invalidity of such a contract; there was not much argument between Judge Finney and the witness, his call was a social one, he had occasion many times to bother Mr. Finney a good deal, and was glad to call on him when he had nothing to bother him about; he happened to be in Washington and made a social call to pay his respects, and in the course of that casual call the question came up and a discussion was had the substance of which he has stated; he does not think that he said anything to Judge Finney to indicate that he was not sure of his opinion or that it was a doubtful one, nor did he ever say that to any one because he does not recall ever having

(Testimony of Oscar Sutro.)

had any doubt. Asked whether he had ever advised Mr. Fall, in substance, that if he had been advising any other company than the Standard Oil Company he would have considered giving a different opinion because he would have thought the subject matter of the contract a legal risk for the company to take, he answered that he would have considered it a legal risk and it is quite possible he might have so advised; he remembers his position was that the contract was legally doubtful, that he did not believe it was valid, that if it was not valid the company that was surer to find it out than any other was the Standard Oil Company, and that it was the last one that should undertake a contract with the Government which was not valid or about which there might be a doubt; whether he would have advised another company that it might take a business risk or a legal risk in the matter he does not know; perhaps he would have; but the position the Standard Oil was in, and the way it had been harassed by Government prosecutions, made him take a more conservative view in giving that company his opinion than he would have taken had he been advising some other company; he does not remember that he so advised Secretary Fall, but he identifies as having been written by him to Secretary [159—86] Fall the following letter, which was read in evidence as Defendants' Exhibit "F," it being stipulated that the same is not in the files of the Interior Department:

DEFENDANT'S EXHIBIT "F."

"June 29, 1922.

My dear Mr. Secretary:

On Mr. Storey's return to San Francisco yesterday I was considerably surprised to learn that you had gained the impression that I was active in advising various oil producers, operating on Government lands, in respect to the legality of the tankage exchange agreement made by the Department. I was particularly concerned because this confirmed a statement by Mr. Loomis that you were annoyed at the technicalities which you considered I had interposed in this transaction.

On this last point Mr. Storey has quite reassured me, and has made it plain that you understand that I was acting merely according to my best lights in advising the Standard Oil Company as I did.

Mr. Storey stated to me that the gist of a letter which you had received on this subject from one of the other oil companies. He said you thought that this communication was addressed to you either at my instance, or under my inspiration. Permit me to assure you that this is not the case. I reached the conclusion which I did on this question in discussion with Mr. Storey alone and quite independently of any conference or exchange of views with other oil producers in California. My opinion was forwarded to Messrs. Ford, Bacon & Davis, who contemplated a bid on this tankage in connection with the sale of the oil to the Standard Oil Company. Messrs. Ford, Bacon & Davis

took independent advice in New York. A letter received by them from New York counsel, and which I believe I showed to the First Assistant Secretary last March in Washington, coincided with my conclusion, and was based in some respects on the identical reasons which I had expressed. Other than this I believe my views were not known, and I certainly did not express them to any other oil producer or counsel. On my return from Washington I learned for the first time that the counsel for the Associated Oil Company and for the General Petroleum Company had reached the same views. I believe at that time neither of them knew the position of our company.

I desire particularly to disclaim any responsibility, direct or indirect, for the letter referred to. In view of the patient courtesy and impartial consideration which I myself received at your hands in a matter of importance to my client, I would consider it not only an evidence of stupidity, but, what is worse, of a lack of appreciation, to have inspired the communication which was sent to you. I knew nothing of it, and had nothing whatever to do with it. Nor, as I have intimated, have I directly or indirectly advised any company, other than the Standard Oil Company, on this subject.

As to the merits of this matter: I trust you will believe that if I could have conscientiously reached a different conclusion I would have done so. My client wanted the business. The first doubt

(Testimony of Oscar Sutro.)

on the matter arose in the minds of the officers of the corporation, by reason of a legal opinion submitted by the Department, and I could not satisfy that doubt. I think if some other company had been involved, I might have been more inclined to have advised the taking of what I consider a legal risk. The experience, however, of our company, which during the previous administration was subject to endless litigation, running into sums exceeding ten million dollars, on claims which were commercially immoral and which proved to be unfounded in law, has been such that with the changes in administration which each election makes possible, I felt myself bound to advise our company not to take any chances. The Department has been so helpful to the oil industry in some of its problems, that I was more than reluctant to advise against the execution of an agreement which would carry out departmental plans. But I trust you will believe me when I say that I did so from a sound conviction, and from a sense of the duty which my employment imposes upon me. I would very much rather have taken the other course, and extended to the Department that cooperation which we desire to give it wherever we can possibly do so.

Believe, me, very sincerely and with great respect,

Yours,

OSCAR SUTRO.

Secretary of the Interior, Washington, D. C."

(Testimony of E. C. Finney.)

The witness testified that he never saw Secretary Fall after 1921 and never discussed this matter with Assistant Secretary Finney after the conversation in March, 1922, about which he testified on direct. He did not transmit to the Interior Department, either to Secretary Fall or Assistant Secretary Finney, copy of his opinion of January 27, 1922; it is his best recollection that the only thing in writing from him to the Secretary of the Interior or the Assistant Secretary of the Interior on the subject of his opinion in this matter is his letter to the Secretary dated June 29, 1922 (Defendants' Exhibit "F" above).

Testimony of E. C. Finney, for Plaintiff.

E. C. FINNEY, called as a witness on behalf of the plaintiff, testified that he is and since March 18, 1921, has been Assistant Secretary of the Interior; prior to that date for four or five years he was a member of the Board of Appeals, Department of the Interior, which is a legal board of review, reviewing decisions in land cases under the Homestead Laws, mining laws, and all branches of public land laws; this board sits as a board of review, reviewing decisions, and makes recommendations to the Secretary or the Assistant Secretary, the board itself not signing or making decisions; prior to becoming a member of this board witness was for a number of years assistant attorney of the Department of the Interior, prior to that he was chief law officer of the Reclamation

(Testimony of E. C. Finney.)

Service, and prior to that he was an examiner of mining claims in the General Land Office; he is an attorney at law, duly admitted to practice.

Between March 18 and May 11, 1921, at the request of Secretary Fall, Judge Finney placed before the Secretary some of the official files of the department which dealt with mining claims and applications for leases in the naval reserves in California, which included the file which related to the Honolulu Consolidated Oil Company and also the application of certain other oil companies for land in these reserves; some of these papers related to claims under the general mining laws, and others relating to application for leases under the Act of February 25, 1920. Secretary Fall asked to be advised as to the situation and wanted information as to some of the claims, mentioning particularly the Honolulu Consolidated Oil Company, and witness drew and placed in his hands those files. Judge Finney also showed the Secretary [161—88] a map of the two reserves and depicted the situation at that time; at the time there were pending claims to lands in both the California naval reserves, a large number thereof being in Reserve No. 2. The witness had no connection with events leading up to the passage of the Act of June 4, 1920, relating to the naval reserves, and did not know of its enactment until some weeks after it had become law, nor from the time of its passage until he became First Assistant Secretary of the Interior did he

(Testimony of E. C. Finney.)

personally have any communication with the Navy Department as to that Department's policy as regards the naval reserves.

During the first part of May, 1921, Secretary Fall spoke to Judge Finney about the proposed order, or about a plan by which the Interior Department could undertake to administer some of the lands in the naval reserves, and asked for a brief statement as to the applicable law. Judge Finney prepared a memorandum a photostat copy of which was produced and he identified as in his handwriting his initials, E.C.F., in the upper corner thereof. This memorandum was received in evidence as Plaintiff's Exhibit No. 52 and reads as follows: [162—89]

PLAINTIFF'S EXHIBIT No. 52.

E.C.F.

“DEPARTMENT OF THE INTERIOR,
WASHINGTON.

Memorandum.

The so-called naval oil reserves were created by Executive order of the President. There are two in California, one in Wyoming, and two shale oil reserves in Colorado and Utah.

Section 18 of the oil-leasing act of February 25, 1920, provides with respect to mining claims initiated prior to withdrawal of lands in naval reserves, that the Secretary of the Interior may lease to the claimants producing wells only, with an area of land sufficient for their operation. The President,

in his discretion, may permit the drilling of additional wells by the claimant or his assignee, or he may, in his discretion, lease the remainder or any part of any such mining claim upon which wells have been drilled, the mining claimant or his assignee to have the preference right to such lease.

A clause in the naval appropriation act for the year ending June 30, 1921, (41 Stat., 812), directed to the Secretary of the Navy to take possession of properties within naval reserves on which there are no pending claims or applications for permits or leases under the oil-leasing act and to 'conserve, develop, use, and operate the same, in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas' as well as the royalty oil from leased lands in naval reserves.

It will be perceived that the Secretary of the Interior has jurisdiction to lease producing wells, the President authority to permit additional wells to be drilled or to lease the remainder of any mining claims in naval reserves, and that the Secretary of the Navy is authorized to conserve, develop and use the naval reserves free from existing claims 'directly or by contract, lease or otherwise.' Therefore, the President may commit to the Secretary of the Interior the matter of authorizing additional wells or leases under section 18 of the leasing act and the Secretary of the Navy may, under authority of the naval appropriation act cited, request the Secretary of the Interior to handle for the Navy the conservation, development, and op-

eration of other lands in naval reserves. 'The royalties from existing leases and such other royalties as may be derived from future leases in naval reserves may be turned over to the Navy Department directly or may be exchanged by the Secretary of the Interior, to the end that the Navy may have its equivalent in fuel oil.

This would avoid the duplications, antagonism, and diversion of authority which existed under the past administration with respect to these matters."

Mr. Finney handed the foregoing memorandum to Secretary Fall and the next step was the preparation of a letter to the Secretary of the Navy, which the witness initialed, thereby indicating that it was either prepared by him or seen by him before it was sent. This matter was received in evidence as Plaintiff's Exhibit No. 53, and reads:

PLAINTIFF'S EXHIBIT No. 53.

"DEPARTMENT OF THE INTERIOR.
WASHINGTON.

May 11, 1921.

PERSONAL.

The Honorable

The Secretary of the Navy.

Dear Mr. Secretary:

Referring to our conversation yesterday, and to your suggestion to the President that the Secretary of the Interior be placed in charge of administration of the laws relating to naval reserves, I am submitting herewith for your consideration a brief memorandum stating the facts and law with re-

spect to naval reserves, a tentative form of letter for your signature if it meets with your approval, and a form of Executive order for the President's signature, if it meets your suggestions of yesterday. Please consider the same and give me any criticisms or suggestions which may occur to you. If they meet with your approval and no changes [163—90] occur to you, kindly return them, with your approval, in order that the matter may be taken up with the President.

Respectfully,
(Sgd.) ALBERT B. FALL,
Secretary.

Inclosure 19756.

(Initials ECF.).” [164—91]

Judge Finney learned of the making of the Executive Order of May 31, 1921, after it had been promulgated; he does not know of any other opinion or memorandum of law on the subject except the above, Exhibit 52, and was not present at any conference between Secretary Fall and any other official of the Government touching the proposed Executive Order. After May 31, 1921, Secretary Fall told the witness that he wished some one who was familiar with the naval reserves and knew something about oil would assist in these matters and Mr. Finney, who had been in California the year previous with Dr. Mendenhall of the Geological Survey and visited the California naval reserves, recommended Dr. Mendenhall to the Secretary who asked Dr. Mendenhall to represent him in those matters. Mr. Finney does not know the

full scope of the representations but he asked the Doctor to act for him or with him.

In April, 1921, there was sent from the White House to the Interior Department the application of the President of the United Midway Oil Company for a lease, prior to which time the witness had had connection with the matter of that application. The United Midway Company had made an application under the previous administration when Mr. Payne was Secretary, and Judge Finney either wrote or initialed the decision which denied the claim. The company appealed to the White House and no action had been taken by President Wilson during his administration. The papers were transmitted to the Secretary of the Interior by the President's secretary in April, 1921.

Under date of June 2, 1921, there was transmitted to the Secretary of the Interior from the Navy Department a communication which, as Plaintiff's Exhibit No. 54, was received in evidence, and reads as follows: [165—92]

PLAINTIFF'S EXHIBIT No. 54.

"My dear Mr. Secretary:

In view of the fact that the President has signed the Executive order committing the naval petroleum reserves to the Secretary of the Interior, with certain reservations, there are forwarded herewith a number of bids which were submitted to the Navy Department in connection with a proposal to drill 22 wells on Section 1-31-24, naval reserve No. 1. As you doubtless know the opening of these bids

314 *Pan American Petroleum Company et al.*

was held up pending the issuance of the Executive order above referred to.

Inasmuch as action on these bids has been delayed for a considerable time it is presumed that the Department of the Interior will take immediate action thereon in order not only to protect the Government's interests in the matter but also to release the \$10,000 checks of the unsuccessful bidders on this land.

The list of bids follows: Roy N. Bishop, Union Oil Co. of California, Pacific Oil Co., Standard Oil Co. of California, Oil Operators Syndicate, Coalinga Mohawk Oil Co., Thos. A. O'Donnell, Miocsne Oil Co., Spaulding Gas & Petroleum Co., United Oil Co., Chas. J. Wrightsman, proposal No. 2 Pan American Petroleum & Transport Co.

While these bids have not been opened officially it should be noted that some of them were opened through inadvertence. A telegram was sent to Lieutenant Commander Landis, the officer in charge of Naval petroleum reserves in San Francisco, not to open the bids, but through a delay on the part of the Postal Telegraph Co. in sending the message some of the bids were opened. However, the contents of the bids were not divulged.

Bids from the following were also received but were withdrawn later by request: Louis Titus, Chas. J. Wrightsman, proposal No. 1; R. H. Anderson.

Before final action is taken on these bids it is requested that consultation thereon be had with

(Testimony of E. C. Finney.)

the Secretary of the Navy as set out in the Executive order referred to.

There is also inclosed herewith a copy of the proposal inviting bids for the lease of the aforesaid lands.

Sincerely yours,

CHAS. B. McVAY, Jr.,

Acting Secretary of the Navy." [166—93]

After receipt of this communication the witness opened the bids enclosed therewith and turned them over to Dr. Mendenhall for analysis. He advised the Secretary of this action and left Washington about the middle of June, 1921, returning about the middle of July. On his return he learned that while he was in the west leases had been authorized for eight of the twenty-two wells advertised to the United Midway Company and fourteen to the Pan American. After Mr. Finney's return to Washington in July there was some conversation between him and Secretary Fall about these leases and about the United Midway claim during which Mr. Fall told him that Mr. Doheny had very courteously waived his right to eight of the wells in order to permit the Secretary to adjust the claim of the United Midway, that the making of the lease to the United Midway had been opposed by Commander Stuart of the Navy and that Dr. Mendenhall had agreed with Stuart, that he did not like Stuart's attitude and was sorry that Mendenhall had been selected to act for the Department in those matters.

Under the previous Administration many of the

(Testimony of E. C. Finney.)

oil and gas leases had been signed by the Secretary of the Interior himself, and in conversation with Secretary Fall he authorized the witness to sign these leases, the understanding being that he would consult the Secretary as to any matters of policy. There is a written order to that effect in the files of the Department which in substance states that all matters of policy involving reversal of established precedents should be submitted to the Secretary before action.

Secretary Fall left Washington for the west about the end of July, 1921, and just prior to leaving he told Mr. Finney that he was going to discuss with some oil men in California the matter of exchanging royalty oil for fuel oil for the Navy. The Secretary returned to Washington the latter part of October. Secretary Fall never discussed with the witness the proposal of Mr. D'Heur on behalf of the Pacific Oil Company, Plaintiff's Exhibit No. 15.

During Secretary Fall's absence in the west and while the witness was Acting Secretary there was received from the American Oil Engineering Corporation letter dated San Francisco, August 27, 1921, which was identified by the witness and offered in evidence by plaintiff. The defendants objected to the receipt of the letter from the American Oil Engineering Corporation in this case on the ground heretofore stated to the Court in connection with defendants' objection to the admission in evidence of correspondence between Mr. D'Heur [167—94] of the Pacific Oil Company and the

Department of the Interior. The Court overruled the objection and admitted the letter in evidence, to which ruling and action of the Court defendants duly reserved an exception. The Court at the same time ordered the right reserved to the defendants to move hereafter to strike the said communication from the record of evidence in the case. The letter referred to is Plaintiff's Exhibit 55 and reads: [168—95]

PLAINTIFF'S EXHIBIT No. 55.

"To the Honorable Secretary of the Interior,
A. B. Falls,
Washington, D. C.

Dear Sir:

In August of 1920, the American Oil Engineering Corporation, through its New York Office, 52 William Street, carried on negotiations with the Navy Department with proposed plan whereby the American Oil Engineering Corporation would act in an engineering capacity in drilling wells, building of pipe lines and storage in connection with the Naval reserve oil lands in California. These negotiations were carried along and finally discussed in detail with Commander Landis, who was in charge at San Francisco. Commander Landis, apparently was favorable to our outline and, we believe, recommended to the Secretary of the Navy at Washington some such plan as we outlined. About the time that this took form, we were informed the President had put most of this Naval reserve work in your hands, and recently Commander Landis of San Francisco

was good enough to suggest that we should take the matter up, in letter form, with you as he was of the opinion that the original proposal possibly did not come before you. We, therefore, would like to give you a brief outline of the proposal that we suggested originally, and would like your consideration of same.

The American Oil Engineering Corporation is a corporation employing the highest class engineers and operators both in the development and in construction work covering pipe lines, refineries, etc. This corporation is independent from any oil company and has in the past, through the engineering firm of Sanderson & Porter, 52 William Street, New York, who are the active heads of the American Oil Engineering Corporation, constructed many of the largest pipe lines in the United States. Sanderson & Porter constructed the General Petroleum pipe line running from Taft to San Pedro, also the Shell Oil of California Company's line running from Coalinga to Martinez. They also constructed the Yarhola and Ozark pipe lines in the Mid-continent running from southern Oklahoma into Illinois. These pipe lines include also pumping stations, tankage, etc. During the past three years, the American Oil Engineering Corporation have done considerable development work in the Mid-continent fields. This company is competent to carry out any obligations that they may undertake, both financially and physically.

Our original proposal as offered to the Navy De-

partment, through the Honorable Josephus Daniels, is briefly:

To carry out any drilling of oil wells and the handling of oil in connection with the Naval reserve in California; this to be done under our supervision in conjunction with the Navy or Interior Department; we to drill the wells wherever designated, which would naturally be only offset wells, and turning over to the Government the entire production less $\frac{1}{8}$ royalty, which we would retain as our fee. This $\frac{1}{8}$ royalty would be the only fee we would receive, and this royalty would be delivered to the Government at the posted price, if desired.

It was intimated in the early negotiations that the Navy Department did not have sufficient appropriations to carry on such work, and we proposed to advance and finance at actual cost under voucher form all moneys necessary for such development, and were to be reimbursed through the production and sale of oil which would go to the Navy Department, and would be paid from their fuel oil funds. This was to be handled strictly on voucher forms, representatives of the Government having the proper auditor and checking system.

This brought about further plans of possible pipe lines and tankage that the Navy would require probably located at San Francisco Bay and San Pedro.

American Oil Engineering Corporation are competent to handle any situation in connection with this development work, or the transportation of oil, or in making dehydration arrangements and,

thereby, delivering to the Navy fuel oil. If it was desired, we would put ourselves in a position to deliver refined products in the future. [169—96]

Compensation for the engineering or construction work of pipe lines or tankage would of course be arranged on a mutually agreed plan; but our first proposal of the drilling and the developing of oil was strictly on a $\frac{1}{8}$ royalty basis, the American Oil Engineering Corporation to receive this $\frac{1}{8}$ royalty as its fee. We refer you to our letter to the Honorable Josephus Daniels, September 27, 1920, and our letter to Commander I. F. Landis, San Francisco, dated July 21, 1921, of which we were informed a copy was sent to the Navy Department at Washington. Copy of this letter is hereto attached.

We thoroughly understand the present conditions of the oil situation in this State and do not assume to make any suggestions to the government officials, but would thank you to give this proposal your consideration for the future. We would be pleased to meet you at any time to discuss any features of our proposal. We believe this would be a sort of blanket arrangement whereby the government would get its full $\frac{7}{8}$ of the production secured it at a minimum cost and without any politics or marketing influences behind the idea. We respectfully submit this and would appreciate your reply.

Yours very truly,

B. T. DYER,

For American Oil Engineering Corp.

909 Nevada Bank Building,

San Francisco, California."

(Testimony of E. C. Finney.)

The witness referred the above letter to Secretary Fall under cover of a memorandum dated October 22, 1921, after which time he knows nothing of the matter. He identified his memorandum, which, over the objection and exception of the defendants on the same grounds as that stated respecting Exhibit 55, was received in evidence and is as follows (Exhibit 56):

PLAINTIFF'S EXHIBIT No. 56.

"DEPARTMENT OF THE INTERIOR,

Office of the First Assistant Secretary, Washington.

October 22, 1921.

Secretary Fall:

I am not advised as to your conclusions in re Navy oil in California nor your plans relative thereto, so can make no comment on this letter of the American Oil Engineering Corporation except that in my opinion the plan is not feasible or advisable.

FINNEY."

There was a conference among the Secretary of the Interior representatives of the Bureau of Mines and one or two from the Navy in October, 1921, in which Mr. Finney did not take part, though he was present for a few minutes. The occasion of his going into the Secretary's office during this conference was a request from the Secretary for a map of the Naval Reserves, which witness in person carried to that office. Mr. Finney saw the letter of Secretary Denby dated October 25, 1921, and Secre-

(Testimony of E. C. Finney.)

tary Fall's reply of October 30th some time after their date; Secretary Fall was on duty in Washington during the month of November and handled those matters and the witness does not recall any dealings with the naval reserve during that month except that he did have a visit from Mr. Cotter and Mr. Staygers who reported that the wells drilled under the leases entered into the previous July had been such small producers that the lessees were losing money on them, that it was impossible to operate them at a profit under the high royalty reserved, and they asked for a reduction of the royalty. Mr. Finney told Cotter and Staygers that he did not think it would be possible to grant the reduction in question but suggested that written applications therefor would be considered if filed. After his talk with Cotter and Staygers, and after they had filed a written application, witness took the matter up with Secretary Fall and talked with him about it and he agreed that it would not be advisable to grant reduction of royalties largely on the ground that those royalties had been fixed by competitive bidding, [171—98] but said he was willing to grant some additional leases in reserve No. 1 to these lessees at lower royalties, which would perhaps enable them to make up their losses on the first wells. The Secretary indicated approximately what these leases should cover; the United Midway having only eight wells they were to have a strip lying south of their eight and the Pan American was to have a lease on the remainder of Section 1 lying outside of the other

(Testimony of E. C. Finney.)

lease areas. Witness' memory is a little vague as to whether or not the Secretary told him how the territory to be covered by these leases at lower royalties was to be ascertained; he thinks there was some agreement proposed between the companies as to the territory which they each should have and that it was proportioned to the number of wells they had. The witness identified lease dated December 14, 1921, between the United States and the Pan American Petroleum Company, which was made pursuant to and in the circumstances above related by him, and the same was received in evidence as Plaintiff's Exhibit No. 57. This lease covers all of Section 1 of the reserve except that theretofore leased and that leased the same day to W. R. Ramsey, referred to in the next paragraph hereof (as shown by map, Exhibit XXX herein), and provided that the lessee pay royalties of oil of 30 degrees Baume or over at the rate of $12\frac{1}{2}$ per cent, on that portion of the average production per well not exceeding 20 barrels per day for the calender month; $16\frac{2}{3}$ per cent when that production exceeded 20 and was not more than 50 barrels, 20 per cent on production over 50 and not exceeding 100 barrels, and 25 per cent on that portion of the average production per well of more than 100 barrels per day; the royalties reserved on oil of less than 30 degrees Baume, on the same graduation, are $12\frac{1}{2}$, $14\text{--}2/7$, $16\frac{2}{3}$, and 20 per cent, respectively.

Witness identified lease between the United States and W. R. Ramsey, dated December 14, 1921, as

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(Testimony of E. C. Finney.)

lease issued to Ramsey as assignee of the United Midway Oil Company for 63 acres of land in Section 1 of Reserve No. 1 which lease was made under the same circumstances as related by the witness as to the Pan American lease and provides for the same royalties. This lease was received in evidence as Exhibit No. 58 and in substance is as above stated.

On December 22, 1921, witness wrote two letters to the General Land Office, one in each of the above mentioned cases, which letters are identical, one being for filing with the United Midway case and the other being for filing [172—99] with the Pan American case, and the latter was received in evidence as Plaintiff's Exhibit No. 59. It is dated December 22, 1921, addressed to the Commissioner of the General Land Office, signed E. C. Finney, Acting Secretary, transmits the applications of the Pan American and United Midway Companies and states that: "These applications were denied orally by the Secretary of the Interior and no further action need be taken thereon other than to file the papers."

Secretary Fall left Washington for the west December 1, 1921. Either he, or Dr. Bain, or perhaps both of them, told Judge Finney about that time that Dr. Bain was to go to California in December and talk with various oil companies about a provision for exchanging Government royalty oils for fuel oil and storage. Mr. Finney knew that Dr. Bain of the Bureau of Mines and Mr. Am-

(Testimony of E. C. Finney.)

brose, the Chief Technologist, had been in consultation more or less with the Secretary and, to a degree, that that work had been committed to the Bureau of Mines, and he knew if he wanted information he could get it from that Bureau. The witness issued a memorandum on November 30, 1921, which by reason of the fact that it contained the words "By direction of the Secretary" he assumed to have been issued by him as the result of oral authority or directions from the Secretary. This memorandum was received in evidence as Plaintiff's Exhibit No. 60 and reads as follows: [173—100]

PLAINTIFF'S EXHIBIT No. 60.

"In re royalty oil, Naval Reserves, California.

By direction of the Secretary, and until further notice, the local representative of the Bureau of Mines, in California, is authorized and directed to send all crude oil certificates representing the Government royalty oil under leases in Naval Petroleum Reserves, California, directly to the Secretary of the Navy, Washington, D. C., at the same time sending to the Bureau of Mines, Department of the Interior, copies of said certificates.

It appearing that the Bureau of Mines has already made arrangements for exchanging crude oil for fuel oil produced during the months of November and December, 1921, the certificates or papers evidencing the amount of fuel oil to which the Navy will be entitled for those months will be de-

livered to the Secretary of the Navy, sending copies to the Secretary of the Interior.

It further appears that the Bureau of Mines is negotiating contracts for the exchange of crude for fuel oil for the calender year beginning January 1, 1922. It is directed that no such contract be consummated, but the pending negotiations may proceed for the time being, the matter to be taken up with and by the Navy at a later time.

(Sgd.) E. C. FINNEY."

Within five or six days after Secretary Fall had left Washington, Judge Finney learned of an opinion of the Judge Advocate General of the Navy with reference to a change of idea concerning the handling of royalty oil from the reserves by the Navy and under date of December 6, 1921, he wrote a letter to the director of the Bureau of Mines which was read in evidence as Plaintiff's Exhibit No. 61, and is as follows:

PLAINTIFF'S EXHIBIT No. 61.

"Dear Mr. Director:

November 20, 1921, you were directed to advise your field representatives in California to send all crude oil certificates representing Government royalty oil, under leases in naval petroleum reserves in California directly to the Secretary of the Navy.

It appearing that arrangements for exchanging crude for fuel oil had been made for the months of November and December, 1921, the certificates evidencing the amount of fuel oil to which the Navy was to be entitled were directed to be delivered

(Testimony of E. C. Finney.)

to the Secretary of the Navy. You were also advised to proceed with contracts which were being negotiated for exchange of crude for fuel oil for the calendar year beginning January 1, 1922, but not to consummate any such contract until further advised.

I am now advised that the solicitor for the Navy Department has rendered an opinion to the effect that it is legal and proper to exchange royalty oil for crude oil for the Navy and to store such oil in tanks to be constructed under arrangements with oil companies, which will build the tanks, taking oil in payment therefor, such tanks to become the property of the United States.

This opinion has been approved by the Secretary of the Navy, who has directed that the arrangements be carried out.

The Navy now requests that our original program be carried through. Accordingly, said order of November 30, 1921, is hereby recalled, and you are directed to proceed in accordance with the plan originally outlined, holding certificates evidencing the oil to which the Government is entitled available for such arrangements as may be later worked out for storage and tankage. Notify your field representatives accordingly.

Respectfully,

E. C. FINNEY,

Acting Secretary." [174—101]

As regards what the witness meant by the phrase "our original program" in the foregoing, he tes-

(Testimony of E. C. Finney.)

tifies that prior to November 30th there had been some discussion about getting fuel oil and storing it, and no conclusion had been reached but Secretary Fall and Dr. Bain were to go west and discuss the matter with oil men. The original plan was to get certificates and hold them until some conclusion was reached so that if the storage was determined upon the certificates could be utilized for fuel oil. Witness did not hear any discussion by any one in the Department in connection with a change of program upon receipt of Mr. Doheny's letter of November 28, 1921. As regards that letter it bears at the top in pencil the name "Finney" in the handwriting of Mr. Safford, who was Administrative Assistant to Secretary Fall, which indicates upon the receipt of that letter in the Secretary's office that Mr. Safford had referred it to the witness, that is to say, by that notation, "Finney," the paper was routed to his desk, this being the customary practice in the Department. The witness read Mr. Doheny's letter of November 28th and took no action upon it and returned it either to Mr. Safford or Mr. Fall, probably the former.

Admiral Robison of the Navy advised him over the telephone about December 5 or 6, 1921, of the opinion of the Judge Advocate-General and it was pursuant to that advice that he wrote Exhibit 61 above. [175—102]

Plaintiff offered and there was received in evidence as its Exhibit No. 237 a telegram dated at

(Testimony of E. C. Finney.)

Washington, D. C., December 6, 1921, reading as follows:

PLAINTIFF'S EXHIBIT No. 237.

To Hon. Albert B. Fall,
c/o U. S. Reclamation Service,
Yuma, Arizona.

Navy Department requests that we proceed as originally planned with reference to exchange of oil and securing storage. Have advised Bureau of Mines. Am advised State of California preparing to file claim with Secretary of the Treasury for royalty naval reserves. Am writing you San Diego.

FINNEY.

There was received by the witness, and by him referred to the Bureau of Mines, the following letter, admitted in evidence as Plaintiff's Exhibit No. 62: [176—102a]

PLAINTIFF'S EXHIBIT No. 62.

"9 December, 1921.

My dear Mr. Secretary:

I have prepared a set of plans and specifications covering the storage of 1,500,000 barrels of fuel oil in steel tanks at Pearl Harbor, T. H. This is, as you know, the storage that is to be constructed and filled with fuel oil in connection with the exchange of royalty oil obtained from the naval petroleum reserves.

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The following is a list of the plans submitted herewith:

Sheet No.	Bureau	
	Serial Number.	Description.
1	94393	Location and wiring.
2	94394	Piping on Upper Tanks.
3	94395	Piping on Lower Tanks.
4	60660	Details of Tank.
5	94396	Piping in Tanks.
6	94397	Foam Fire Protection (Upper Tanks).
7	94398	Foam Fire Protection (Lower Tanks).
8	94399	Quay Wall — Location.
9	94400	Quay Wall — Cross Section.

There are also forwarded herewith one copy of the specifications covering the construction of this plant and one set of the usual General Provisions forming a part of the Bureau of Yards and Docks, Navy Department, contracts for public works.

The plans and specifications as submitted are complete except that no form of contract or bidding items have been prepared, and the elevations of the bottoms of the tanks, the depths of the trenches and the elevations of the pipe lines have not been fixed. Furthermore, certain features of the quay wall construction are also dependent upon securing data locally. This information has been asked for by cable and will be furnished when reply has been received. In preparing this project for bidders the Navy Department will be pleased to be of any assistance possible in connection therewith.

By reference of the detailed plans of this project it will be noted that the character of the tanks differs somewhat from the standard type of construction; this departure from this standard type is merely a detail however, and is considered necessary on account of the military features of the project and in view of the fact that the tanks are to be used for storing fuel oil for long periods of time.

In connection with the actual construction work on the project and the inspection thereof it is believed that the technical force of the Navy Department can be of material help and benefit and I shall be pleased to detail an officer for duty of this character at such time as you may request.

In view of the fact that this project is embodied in the war plans of the Navy Department it is requested that all matters in connection therewith be regarded in as confidential a manner as possible.

Sincerely yours,

(Signed) THEODORE ROOSEVELT,
The Honorable, The Secretary of the Interior, Department of the Interior." [177—103]

Witness acknowledged the above by Plaintiff's Exhibit No. 63, as follows:

PLAINTIFF'S EXHIBIT No. 63.

"December 10, 1921.

(Attention of Admiral J. K. Robison.)

The Honorable,

The Secretary of the Navy.

Dear Mr. Secretary:

I have to acknowledge the receipt of letter from

Assistant Secretary Theodore Roosevelt, dated December 9, 1921, relative to the matter of providing tanks for storage of fuel oil. The matter will be promptly taken up by our Bureau of Mines.

Admiral Robison recently advised me over the telephone of opinion rendered by your Solicitor as to the legality of exchange of crude for fuel oil and of payment for storage tanks, to become the property of the Navy, in oil instead of money, stating further that you had authorized and directed that this Department proceed to handle the oil and make the exchanges according to original plans.

I have to request that this oral information be confirmed formally in writing, and in that connection would be pleased to have a copy of your solicitor's opinion.

There seems to exist some uncertainty as to the desires of the Navy in connection with the oil coming to the Government as royalties in the naval reserves. Our department, through the Bureau of Mines, has arranged with four pipe line companies for the exchange of royalty crude oil received during the months of November and December for fuel oil, to be delivered by the contractors at tide-water points. Is it your desire that similar arrangements be made as to royalty oil received during the first six months of the calendar year 1922, or do you desire that such oil be utilized in payment for tankage for the Navy, to be constructed at such points as you may designate? In other words, under present plans, the royalty oil accru-

ing to the Government will not be adequate to supply the Navy with fuel oil for current use, and at the same time be utilized as a medium for purchase of storage facilities.

It occurs to me that some definite understanding should be reached, and it may be advisable to arrange a conference between representatives of your Department and of this Department in order to reach a definite understanding as to future procedure. If you agree with this view, I shall be glad to arrange such a conference to suit the convenience of the Navy Department.

Sincerely,

E. C. FINNEY,
Acting Secretary."

Thereupon plaintiff offered and there was admitted in evidence as Plaintiff's Exhibit No. 64 the following extract from the minutes of meeting of the Navy Council:

PLAINTIFF'S EXHIBIT No. 64.

"Thursday, 8 December, 1921.

Present:

Secretary Denby.

Assistant Secretary Roosevelt.

Admiral Coontz.

Rear Admiral Washington.

McVay.

Robison.

Raylor. [178—104]

Capt. Bakenhus, representing Y&D.

Capt. Leutze, representing S&A.

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Rear Admiral Stitt.

Gen. Neville, representing Marine Corps.

Rear Admiral Latimer.

Moffett.

Smith.

Captain Willard.

Commander Rowcliff.

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No. 14. Admiral Robison stated that the Judge Advocate General had given opinion on the various points raised in the oil question to the effect that these propositions were legal; and that the immediate need is appropriation for those tanks at Pearl Harbor. Asked permission to request Secretary of Interior to enter into contract to be referred to Navy Department before execution for consideration, etc., the Secretary said he wanted the details from the Secretary of the Interior before he took it up with the Appropriation Committee. Discussion was then had of a letter that had been prepared to the Secretary of the Interior in which doubt was expressed as to the legality of the procedure, and it was decided to omit any reference to this, the Secretary saying that anything going to the Secretary of the Interior should go through him."

Under date of December 14, 1921, witness signed and there was sent to the Secretary of the Navy letter which as Plaintiff's Exhibit No. 65 was admitted in evidence and is as follows: [179—105]

PLAINTIFF'S EXHIBIT No. 65.

"Dec. 14, 1921.

The Honorable

The Secretary of the Navy.

Dear Mr. Secretary:

Referring again to your letter of November 15, 1921, regarding the exchange of royalty oil for fuel oil used by the Pacific Fleet:

I have already arranged for the exchange of royalty oil, produced within Naval Petroleum Reserves Nos. 1 and No. 2, for fuel oil to be delivered at tidewater points on the Pacific Coast for the months of November and December, 1921, and the Department now has under consideration further exchanges for the first six months of 1922. In addition to this, certain leases have been granted for the drilling of additional wells in Naval Reserve No. 2 and the Department has called for bids on three strips of land located in Naval Reserve No. 1.

Estimates have been made of the amount of royalty oil which will be produced from present wells and wells to be drilled in the near future and estimates have also been made of the amount of fuel oil which can be received in exchange for the royalty oil produced on these reserves.

You will find below a table giving the estimated amount of royalty oil which will be produced up to June 30, 1922 and the estimated amount of royalty oil to be available for the fiscal year 1923, together with figures showing the equivalent fuel oil available at tidewater points on the Pacific Coast:

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	Royalty Oil in barrels	Equivalent Fuel Oil in Barrels at Tidewater
1921		
November - December	62,200	61,220
1922		
January - February	140,000	139,100
March - April	160,000	154,040
May - June	230,000	213,046
<hr/>		
Total 8 months		
November 1 - June 30	592,200	567,406
Fiscal Year -		
July 1, 1922 - July 1, 1923	1,350,000	1,282,460

As soon as exchange arrangements have been made for the first six months of 1922 I will advise you as to the points of delivery of this fuel oil.

The fuel oil exchanged for each months' production will be available at tidewater points 15 to 20 days after the end of the month in which it was produced. The estimated 61,220 barrels of fuel oil available from production for November and December will be delivered by the following companies at the various tidewater points listed below:

Points of Delivery of Fuel Oil for Both November
and December, 1921.

Company	Quantity	Delivery Points
Associated	11,000	San Francisco Bay Monterey or Gaviota
[180—106]		
General Petroleum	17,800	San Pedro
Standard	18,020	Richmond or San Pedro
Union	14,400	San Louis or San Pedro
<hr/>		
Total	61,220	

You appreciate of course that the figures submitted above are based upon a certain given drilling program. Many of the wells will have a greater or less initial production than the amounts estimated and it will be necessary therefore to submit you from time to time as drilling progresses, revised estimates. I believe, however, that the above figures furnish a reasonable basis considering the uncertainties involved.

Respectfully,

E. C. FINNEY,

Acting Secretary." [181—107]

The "certain leases" which had "been granted for the drilling of additional wells in Naval Reserve No. 2," referred to in the foregoing letter (Exhibit No. 65), resulted from the sending out by the Secretary of the Interior November 14, 1921, of nine telegrams (in this statement already set forth as Exhibit No. 27); these telegrams were initialed by Mr. Safford, the Secretary's Administrative As-

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(Testimony of E. C. Finney.)

sistant, and signed by Secretary Fall; they did not pass through Mr. Finney's hands.

The said leases all provided that the lessee should render to the Government royalties on a scale of $12\frac{1}{2}$ to 25 per cent, these royalties being known as the Interior Department regulation royalties, *pp.*

The names of the lessees, dates of the leases and acreage covered by each are as follows: Union Oil Company of California, December 5, 1921, 320 acres; General Petroleum Company, December 20, 1921 (acreage not given); Consolidated Mutual Oil Company, January 1, 1922, covering an area in the west half of Section 28; United Oil Company, November 30, 1921, 80 acres; Caribou Oil Company, February 6, 1922, 90 acres; Record Oil Company, February 6, 1922, 40 acres; Wilkes Brothers and others, April 10, 1922, 80 acres; Buena Vista Oil Company, two leases dated December 5, 1921, one for 40 and one for 60 acres; Associated Oil Company, two leases, one dated December 1, 1921, for 1020 acres, and one dated April 4, 1922, for 160 acres; Murvale Oil Company, January 10, 1922, for 1121 acres; making in all twelve leases to ten lessees in Reserve No. 2 all entered into under the provisions of the Act of February 25, 1920, and pursuant to telegrams of November 14, 1921.

The reference to the call "for bids on three strips of land located in Naval Reserve No. 1" in the above Exhibit No. 65 related to strips in Section 2, Section 6, and Section 25, the last two adjoining Section

(Testimony of E. C. Finney.)

36 located near the center of the reserve; lease on the strip on the north side of Section 2 was ultimately awarded to the Pan American Company, the highest and best bidder. No satisfactory bids were in fact received for leases in Section [182—108] 6 and Section 25 and no award of leases in those sections was made at that time.

Letter addressed to the Secretary of the Interior from the Secretary of the Navy dated December 14, 1921, crossed the above letter (Exhibit 65) in the mail, and it was received by Judge Finney and as Plaintiff's Exhibit No. 66 admitted in evidence. Said letter reads: [183—109]

PLAINTIFF'S EXHIBIT No. 66.

"My Dear Mr. Secretary:

I am in receipt of Acting Secretary of the Interior Finney's letter of December 10, 1921, with reference to certain matters in connection with the oil to be obtained from the Naval Petroleum Reserves and the disposition thereof.

In confirmation of Admiral Robison's telephone conversation with Judge Finney, I beg to inform you that it is my desire that the Interior Department proceed to handle the oil and make the exchanges for fuel oil and storage according to plans as set forth in Navy Department letters of October 25, 1921, and December 9, 1921.

In this connection I would quote for your information an extract from an opinion, which I have

approved, of the Judge Advocate General of the Navy anent the question of the exchange oil royalty crude oil for fuel oil in storage:

'The act above quoted (naval appropriation act of June 4, 1920, 41 Stat. 812) authorizes the Secretary "to use, store, exchange, or sell the oil and gas products from the properties within the naval petroleum reserves and those from all royalty oil from the lands in the naval reserves for the benefit of the United States." The authority granted the Secretary of the Navy "to store" this oil and its products necessarily carries with it the authority to designate the place of storage and the authority to provide the means of storage. The authority granted "to exchange" is unrestricted: i. e., the act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired "to store" some of the oil and its products, he has the authority "to exchange" a part of the crude oil for oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks so received in exchange may legally become the property of the United States."

I would further state that it is my desire for the Department of the Interior to use all royalty crude oil until further notice in payment for tankage for the Navy and for filling said tankage with fuel oil for storage. It is presumed, therefore, that the Department of the Interior will proceed as soon as

practicable to make a contract for constructing the storage tanks at Pearl Harbor, Hawaii, in accordance with the plans and specifications recently forwarded to your department. Plans and specifications for storage tanks at other points will be furnished in due time and prior to the completion of the Pearl Harbor project.

It is not anticipated that any of the royalty oil accruing to the Government will be used to furnish a current supply of fuel oil to the Navy for several years to come. If practicable, I also desire to use the accrued royalty oil received during the months of November and December, 1921, as a credit against the construction and filling of the Pearl Harbor storage. If, as it appears from Acting Secretary Finney's letter of the 10th instant, arrangements have already been made with reference to the disposition of the November and December royalty oil, I should be pleased to know as soon as practicable whether or not the equivalent fuel oil to be obtained therefor cannot be used for filling in part the storage tanks to be constructed at Pearl Harbor, Hawaii.

I have designated Rear Admiral J. K. Robison as my representative to handle all details in connection with naval petroleum reserve questions, and I feel sure that he will co-operate with the officials of your department in every way possible.

If entirely practicable, I should be pleased to receive a monthly summary of the operation of the reserves and of the progress of the work being done

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on storage tanks in order that the Navy Department may be kept in close touch with this most important unit of its future fuel supply.

Sincerely yours,

EDWIN DENBY." [184—110]

During the period covered by these last few letters Admiral Robison, representing the Navy Department, Dr. Bain, Director of Mines, and Mr. Ambrose, fuel technologist of the Bureau of Mines, were in consultation on the subject matter referred to in the correspondence. On December 16th Dr. Bain came to Judge Finney's office with Mr. Doheny's letter of November 28, 1921 (Exhibit No. 33 above), which letter witness had not seen from the time he returned it to Mr. Safford late in November; in some way it had got into Dr. Bain's hands and he brought it to Judge Finney's office and said he would like to see Mr. Cotter and asked the witness to write Mr. Cotter to that effect. Pursuant to that request witness under date of December 16, 1921, wrote the following letter (Exhibit 67):

PLAINTIFF'S EXHIBIT No. 67.

"Mr. J. J. Cotter,

Pan American Petroleum and Transport Co.,
120 Broadway,
New York, N. Y.

Dear Cotter:

Will you be in Washington any time between now and December 27? If so, please call on Director Bain of the Bureau of Mines who wishes some in-

formation from you with respect to the matter discussed in Mr. Doheny's letter of November 28, 1921.

Please let me know when you will be here.

Sincerely,

E. C. FINNEY,
Acting Secretary."

On the retained file copy of the above in Dr. Bain's handwriting is the following notation: "I asked Mr. Finney to send this since Doheny's bid will be considered through the New York office and I thought we might get it outlined before we go west. Bain."

Plaintiff's counsel thereupon stated that while he did not intend to ask the witness about the same, he desired at this point, so as to keep the matter chronological, to offer two letters, one dated New York, December 14, 1921, from E. L. Doheny, Jr., to Admiral J. K. Robison, and the other dated Washington, December 15, 1921, from Admiral Robison to E. L. Doheny, Jr., which two letters were admitted in evidence as Plaintiff's Exhibits 68 and 69, respectively, and read as follows: [185—111]

PLAINTIFF'S EXHIBIT No. 68.

"December 14, 1921.

"My dear Admiral:

Pursuant to the conversation which we had Monday night after dinner, I discussed with my father your plan in connection with the development of the Naval Reserve Lands. He agrees with you that the plan of off-setting wells drilled on privately owned lands adjoining the Naval Reserve is the proper one

and that a double line of wells will get better results than a single one.

He believes that wherever possible the drilling plan of competitors of the department should be anticipated and wells drilled along boundary lines to protect the Naval Reserve. This, of course, should not apply to cases where the adjacent lands are being exploited by other branches of the Government since it is not economical for one Department of the Government to compete with another to such an extent that it will cause what is called "a boundary fight."

My father will probably be in Washington on Saturday, and you might take advantage of that fact to have a chat with him as I suggested.

Thanking you again for the very pleasant evening last Monday, and with best regards to yourself and Mrs. Robison, I remain

Yours sincerely,

(S) NED.

E. L. DOHENY, Jr."

PLAINTIFF'S EXHIBIT No. 69.

"December 15, 1921.

"My dear Doheny.

Thank you for your full note of the 14th. I will make an effort to be here when your father comes to Washington on Saturday; and will be glad to see him again and talk over the oil situation.

Yours sincerely,

J. K. ROBISON."

Thereupon there was admitted in evidence as Plaintiff's Exhibit No. 70 letter signed H. Foster Bain, reading, in part, as follows:

PLAINTIFF'S EXHIBIT No. 70.

"December 23, 1921.

The Honorable,

The Secretary of the Interior,

Dear Mr. Secretary:

Confirming my telegraphic correspondence with you, I am planning to stop off at Three Rivers the morning of the thirty-first, arriving from Chicago, on the Rock Island, and will leave the next morning for Los Angeles.

I am going West primarily to consult with the Standard and such other companies as we may determine in conference between us should be taken into account with regard to the tankage plant of the Navy. I have seen Mr. Cotter, and he is getting for us additional data now. I have also had a preliminary conference with the J. G. White Company, which has done a large amount of construction work for the Navy and is also dealing in oil. By the time I reach you I will be able to give you some idea of the character of the contract which should be made in this case. Mr. Finney has, I believe, already told you that the Navy has given the Department a free hand to go ahead." [186—112]

Dr. Bain left Washington for the West in December; before leaving he mentioned having talked with Mr. Cotter; he returned to Washington January 23 or 24, 1922, and Secretary Fall, who

left Washington December 1, 1921, returned January 27 or 28, 1922. After Bain returned from the west he told witness that he had interviewed a number of oil companies and there was a conference in Secretary Fall's office at which the Secretary, Dr. Bain, and witness were present and regarding which witness testifies: "I recall distinctly that Mr. Fall said he wished Bain and myself to look after the particular matter of the construction of tankage and the filling of it with oil in the West because he would be occupied with some other affairs or other business."

On January 25, 1922, witness received from Dr. Bain the following, read in evidence as Plaintiff's Exhibit No. 71:

PLAINTIFF'S EXHIBIT No. 71.

"Dear Mr. Finney:

Attached is a copy of the opinion of the Advocate General of the Navy covering the exchange of royalty crude oil for fuel oil in storage. It may be well to get the opinion of the department solicitor, informally, at least, on this matter.

Cordially yours,

H. FOSTER BAIN,

Director."

At a later date the witness discussed with Secretary Fall the matter of whether the law authorized the tankage, but he does not remember discussing with the Secretary that particular letter (Exhibit 71).

The invitations for bids for construction work

at Pearl Harbor, in exchange for royalty oil in the California naval reserves, which were dated February 15, 1922, with specifications that accompanied them, were brought in rough draft to Mr. Finney's office by Dr. Bain, a few days prior to February 15th, and the former went over them largely as to legal form, he not being an expert on oil matters. This was the first draft of invitation for proposals or specifications which he had seen. About or prior to that time Dr. Bain told witness that the Pan American and J. G. White Engineering companies were contemplating co-operating on the Pearl Harbor storage project, under a plan by which the White Company would do the building.

Under date of January 11, 1922, from San Francisco Dr. Bain [187—113] wrote to Mr. Gano Dunn of the J. G. White Engineering Corporation the following letter which was read in evidence as Plaintiff's Exhibit No. 72:

PLAINTIFF'S EXHIBIT No. 72.

"Dear Mr. Dunn:

I have gone over with a few of the leading oil companies out here the matter you and I discussed in Washington. It appears to them that it is one which should be handled primarily by an engineering company, though each of the big companies has expressed an entire willingness to cooperate in the enterprise and to make contracts that will protect the engineering company as to market and financing.

In particular, I discussed the matter with Mr. E. L. Doheny, who had previously been called into it and had at first thought of undertaking the whole project. I took the liberty of mentioning to him our conversations in general terms. His feeling is that there is a natural basis for co-operation between his company and yours, and I have told him I would mention that fact to you. He expects to leave for the East on Saturday of this week and you will hear from him in New York soon after his arrival. I shall probably be in Washington at the same time and will come over to New York as soon as I can after my return.

I think there would be certain advantages to an engineering company and an oil company working together on the project since each would be able to estimate the risks in a special phase of the work, and to provide against them. I may say that a similar combination as the one I am suggesting to you is in line of being formed between the Standard and one of the other engineering corporations.

I hope to see you before long and discuss matters in greater detail as also to arrange for some definite proposals which we may submit to the Secretary.

Cordially yours,

H. FOSTER BAIN,

Director." [188—114]

(Testimony of E. C. Finney.)

The witness testified that there was no discussion between Secretary Fall and himself, or Dr. Bain and himself, as to who should get the above referred to invitations for bids, nor does he recall any discussion between the Secretary and himself, or between the Secretary and Bain in his presence, or between Bain and himself, as to advertising these proposals; the only discussion he heard was the plan to have Dr. Bain proceed to the west and visit various oil companies, he did not hear the names of them, it was just a general statement; he has no knowledge how it was determined to whom the invitations dated February 15th should be sent; the first invitations were sent out by Dr. Bain.

Thereupon plaintiff offered in evidence a letter from H. Foster Bain to E. L. Doheny, Mexican Petroleum Company, stipulating in open court in connection with that exhibit that letter of similar import, except as to the name of the party addressed, was at the same time sent to H. M. Storey, of the Standard Oil Company, Standard Oil Building, San Francisco, California; A. C. McLaughlin, Associated Oil Company, San Francisco; Charles N. Black, care of Ford, Bacon and Davis, San Francisco; and J. G. White Engineering Corporation, New York City; the paper was admitted in evidence as Plaintiff's Exhibit No. 73 and is as follows:

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PLAINTIFF'S EXHIBIT No. 73.

"February 15, 1922,

Mr. E. L. Doheny,
Mexican Petroleum Company,
120 Broadway,
New York, N. Y.

Dear Mr. Doheny:

You will find inclosed an outline of a plan for the erection and filling of storage tanks with 1,5000,000 barrels of fuel oil which is being sent to you to serve as a basis in making your bid to the Secretary of the Interior regarding the provision and filling of the storage referred to above.

Your attention is invited to the fact that this bid should be in the hands of the Secretary of the Interior not later than March 1, 1922.

Cordially yours,

H. FOSTER BAIN,
Director."

Plaintiff thereupon offered in evidence the enclosure sent with each of the above-mentioned letters which Exhibit 73 is one, which enclosure [189—115] was admitted as Plaintiff's Exhibit No. 74 and was substantially as follows:

PLAINTIFF'S EXHIBIT No. 74.

Paper dated February 15, 1922, calling for bids to be submitted to the Secretary of the Interior not later than March 1, 1922, for the acceptance of royalty crude oil accruing to the Government from leases in naval petroleum reserve No. 2, California, in exchange for certain storage facilities

to be provided at Pearl Harbor and 1,500,000 barrels of fuel oil to be delivered into the storage facilities to be constructed at that point.

The call for proposals provided that the storage facilities should be constructed under plans and specifications prepared by the Navy Department and the work done under inspection and subject to acceptance of an engineer officer representing the Government, to whose approval all contracts or subcontracts would be subject as well as all plans, methods of work, etc.; that construction work should be started promptly and completed within 18 months from its commencement.

It was provided that the ratio of exchange of the Government's crude oil for the storage facilities should be the market field price of the crude oil delivered at the time of its production or any higher price that might be agreed upon on the one side, and on the other, the actual and necessary expense of the bidder in constructing the storage facilities as approved by the engineer officer in charge and a fixed sum to be proposed by the bidder to cover engineering supervision and all general expenses; that the ratio of exchange for Government crude oil for fuel oil to be delivered by the bidder would be for each barrel of crude oil of the various gravities produced for such number of barrels or fraction of barrels of fuel oil in tanks at Pearl Harbor as the bidder would propose for each specified gravity of crude oil;

That proposals would be received for the furnish-

ing of the storage facilities and fuel oil either jointly or separately; [190—116]

That in the event separate proposals were made for the storage facilities, bidders would agree to accept therefor crude oil in the field, and that in the event proposals were made separately for furnishing the fuel oil in storage the bidder would agree to accept therefor crude oil in the field, and, if required, also to accept at market prices oil tendered by the successful bidder for the construction of the storage facilities. It was provided that 4,000,000 barrels of royalty crude oil from naval reserve No. 2, California, or as much thereof as might be necessary would be allocated to cover demands accruing to the successful bidder, and that should leases already granted or thereafter granted fail to produce sufficient oil and thereby tend to prolong the term of the contract, the Secretary of the Interior would in his discretion lease additional lands in naval reserve No. 2 or in such other petroleum reserves as he might designate sufficient to maintain crude oil deliveries to approximately 500,000 barrels per annum.

It was provided that proposals would also be considered based upon delivery of crude oil from naval petroleum reserve No. 1 in addition to naval reserve No. 2, and it was estimated that the yield per annum of Government royalty crude oil from naval reserve No. 1 was from 500,000 to 600,000 barrels.

It was also provided that upon the signing of a satisfactory agreement there would be turned over

to the successful bidder oil which had accumulated since November 1921, amounting to about 102,000 barrels, credit for such advance delivery to be given the Government. It was further provided that advance credits on either side would be subject to an interest charge at — per cent per year, determined on daily balances and to be paid in oil.

The successful bidder was required by the terms of the proposal to furnish bond in the sum of \$100,000. [191—116-a]

Thereupon plaintiff offered, and there was admitted as Plaintiff's Exhibit No. 76, letter dated February 8, 1922, initialed H. F. B., A. W. A., E. C. F., addressed to Mr. Paul N. Shoup, San Francisco, signed by the Secretary of the Interior, and reading:

PLAINTIFF'S EXHIBIT No. 76.

"My dear Mr. Shoup:

Mr. H. Foster Bain, Director of the Bureau of Mines, has advised me of the conversation in your office on January 16, 1922, between A. C. McLaughlin, Morris Lombardi, A. W. Ambrose, H. Foster Bain and yourself, regarding the advisability of setting up the temporary reserve located mostly in Naval Reserve No. 1, California.

The Department of the Interior hereby agrees not to start the drilling of any well without six months notice to the Pacific Oil Company provided the Pacific Oil Company agrees not to start the drilling of any well without six months notice to the Department of the Interior on the land described

354 *Pan American Petroleum Company et al.*

(Testimony of E. C. Finney.)

below and shown on the attached plat in hatched lines. The land included in this so-called temporary reserve is described as follows:

T. 30. S., R. 24 E.

SW. $\frac{1}{4}$ Sec. 27, S. $\frac{1}{2}$ Sec. 28, S. $\frac{1}{2}$ Sec. 29, SE. $\frac{1}{4}$ Sec. 30, E. $\frac{1}{2}$ Sec. 31, All of Sections 32 and 33, W. $\frac{1}{2}$ Sec. 34.

T. 30. S., R. 24 E.

NW. $\frac{1}{4}$ Sec. 3, N. $\frac{1}{2}$ Sec. 4, N. $\frac{1}{2}$ Sec. 5, NE. $\frac{1}{4}$ Sec. 6.

Please advise me whether or not this proposal is satisfactory to the Pacific Oil Company.

Respectfully,

ALBERT B. FALL,

Secretary."

Witness testified that he was advised either by the Secretary or by Dr. Bain that the proposition referred to in the above was under consideration and he saw a map on which the area had been defined by the Bureau of Mines; that another letter addressed to Mr. Paul N. Shoup, at New York, dated February 17, 1922, was prepared in the Bureau of Mines, signed by the witness, and the same having been admitted in evidence as Plaintiff's Exhibit No. 77, was read, as follows:

PLAINTIFF'S EXHIBIT No. 77.

"Dear Mr. Shoup:

Secy. Fall wrote you on February 8, 1922, regarding a temporary reserve located within Naval

Petroleum Reserve No. 1.

Mr. Frank Mulks, office manager, San Francisco, has just wired me as follows:

'Your letter eighth to Mr. Shoup inclosure 78211, Mr. Shoup in New York will you kindly mail copy your letter to him there 165 Broadway.'

In response to this telegram you will find inclosed a copy of my letter of February 8, and the blue print which accompanied it.

Respectfully,

E. C. FINNEY,
Acting Secretary." [192—117]

Mr. Shoup replied from New York under date of February 24, 1922, his letter, received in evidence as Plaintiff's Exhibit No. 78, reading:

PLAINTIFF'S EXHIBIT No. 78.

"Dear Mr. Finney:

Your favor of the 17th enclosing copy of Secretary Fall's letter of February 8th:

The proposal outlined in the Secretary's letter is acceptable to the Pacific Oil Company and this letter and the letter of the 8th are accepted as binding the Government and our Company to the program outlined.

Yours truly,

PAUL SHOUP."

So far as Judge Finney knows the arrangement made by the two last quoted letters is still in force.

Within a day or two after the invitation for bids on the Pearl Harbor project dated February 15, 1922

(Exhibit 74), had been sent out, Mr. Finney's attention was called to the following letter from Admiral Gregory, Chief of the Bureau of Yards and Docks of the Navy, which letter as Plaintiff's Exhibit No. 79 was admitted in evidence:

PLAINTIFF'S EXHIBIT No. 79.

"February 14, 1922.

From: Chief of Bureau of Yards and Docks.

To: Chief of Bureau of Engineering.

Subject: Additional fuel oil storage, naval station,
Pearl Harbor.

1. The bureau understands that as a result of a conference held at the Department of the Interior on February 13, 1922, between the Secretary of the Interior and the Chief of Bureau of Engineering, it is the intention of the Department of the Interior to contract for the construction of the proposed additional fuel-oil storage at Pearl Harbor on what is known as a 'cost-plus-a-fixed-fee' basis. The bureau views such an arrangement with much concern and desires to point out that its experience with contracts of the type proposed has generally proved most unsatisfactory.

2. While it is commonly believed that a 'cost-plus-a-fixed-fee' contract is an improvement in some respects over other 'cost-plus-a-percentage' contract, it should be understood that neither form offers any incentive to a contractor to perform work economically, and, in fact, serves to put a premium on wastefulness. Either form is fraught with innumerable possibilities for criticism, litiga-

(Testimony of E. C. Finney.)

tion, and contractual difficulties and burdens the supervisory force by the need for additional checkers and accountants. It is the opinion of the bureau that contracts of this type are to be carefully avoided.

3. The bureau would respectfully call attention to the fact that its opinion is based upon experience gained in the execution and supervision of nearly 4,600 contracts covering public-works construction of widely different character and of considerable magnitude, and of which a number during the war period were of a 'cost-plus' form. Inasmuch as the design and the supervision of the construction of the proposed project will rest with the bureau, it is felt that its experience as to the form of contract covering the work should be given equal consideration.

L. E. GREGORY." [193—118]

When this letter came to the attention of the witness Dr. Bain was out of town and witness took the matter up with Mr. Ambrose and also mentioned it to Secretary Fall, both of whom agreed that the cost-plus plan was not feasible. Mr. Ambrose and witness drafted a telegram which was sent to E. L. Doheny of the Pan American Petroleum & Transport Company, A. C. McLaughlin of the Associated Oil Company, H. M. Storey of the Standard Oil Company of California, Gano Dunn of the J. G. White Engineering Corporation, and Charles N. Black of Ford, Bacon and Davis; these telegrams which, except as to addresses, were all the same, bore date February 17, 1922, were signed "Finney,

Acting Secretary," were admitted in evidence as Plaintiff's Exhibit No. 80, and read:

PLAINTIFF'S EXHIBIT No. 80.

"Referring letter Director Bain February 15th relative bids, please defer action until receipt my letter this date. Change proposed."

Identic letter dated February 17, 1922, referred to in the foregoing telegrams, and addressed to the same persons as were the telegrams, were mailed on that date and read as follows (the same having been received in evidence as Plaintiff's Exhibit No. 81):
[194—119]

PLAINTIFF'S EXHIBIT No. 81.

"It has been found necessary to change the basis of bids for the erection of storage tanks and facilities and the storage of fuel oil in tanks at Pearl Harbor according to the plans submitted in Director Bain's letter of February 15, 1922.

You are invited therefore to submit bids for the same storage facilities and the same quantity of fuel oil as outlined in the plans submitted with Director Bain's letter, except that the Department now wishes bids to cover all royalty oil in Naval Reserves 1 and 2, California.

The new plan of bidding provides essentially for (1) the taking of royalty oil referred to above in exchange for which the bidder agrees to pay such sums as may be designated by the Secretary of the Interior but not exceeding the value of the royalty oil already delivered, to any contractor under con-

tract with the Secretary of the Interior for the construction of storage tanks and facilities, and (2) the filling of the storage tanks with fuel oil on a basis of exchange of royalty crude oil for fuel oil in tanks at Pearl Harbor.

Competition in the present bidding therefore relates to (1) the premium which the bidder will pay above the posted field price for the account of construction of the storage, and (2) the ratio of fuel oil which the bidder will deliver in storage tanks at Pearl Harbor for each barrel of crude oil in the field.

You are requested, therefore, to bid upon the following plan:

Bid No. 1.

For each barrel of royalty crude oil in the field of the gravity designated below, the bidder agrees to credit to the account for the erection of storage, — cents above the posted field price at the time of production.

14° to 17.9° — cents above posted field price at
time of production.

18° to 18.9° — cents above posted field price at
time of production.

19° to 19.9° — cents above posted field price at
time of production.

20° to 20.9° — cents above posted field price at
time of production.

21° to 21.9° — cents above posted field price at
time of production.

22° to 22.9° — cents above posted field price at
time of production.

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- 23° to 23.9° — cents above posted field price at
time of production.
- 24° to 24.9° — cents above posted field price at
time of production.
- 25° to 25.9° — cents above posted field price at
time of production.
- 26° to 26.9° — cents above posted field price at
time of production.
- 27° to 27.9° — cents above posted field price at
time of production.
- 28° to 28.9° — cents above posted field price at
time of production.
- 29° to 29.9° — cents above posted field price at
time of production.

For each increase in gravity of one (1) full de-
gree above 30° gravity up to and including
34.9° gravity — cents additional;

35° gravity and above — cents additional.

Bid No. 2.

The bidder agrees to fill the storage when com-
pleted or as completed with fuel oil of a grade speci-
fied in Director Bain's letter of February 15, 1922,
upon the following basis of exchange:

1 bbl. crude oil in field.

Gravity (Baume) to equal the number of barrels
of fuel oil as hereinafter specified: [195—120]

14° to 17.9° — bbls. of fuel oil in tanks at Pearl
Harbor.

18° to 18.9° — bbls. of fuel oil in tanks at Pearl
Harbor.

19° to 19.9° — bbls. of fuel oil in tanks at Pearl
Harbor.

- 20° to 20.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 21° to 21.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 22° to 22.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 23° to 23.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 24° to 24.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 25° to 25.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 26° to 26.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 27° to 27.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 28° to 28.9° — bbls. of fuel oil in tanks at Pearl Harbor.
- 29° to 29.9° — bbls. of fuel oil in tanks at Pearl Harbor.

For each increase in gravity of one (1) full degree above 30° gravity up to and including 34.9° gravity, — barrels additional.

35° gravity and above — barrels in tank at Pearl Harbor.

(Note: Carry above to third decimal place.)

After bids have been received covering the handling and disposition of oil under the amended plan outlined herein, detailed plans and specifications will be furnished and the Secretary of the Interior will call upon contractors for bids for the construction of storage tanks and facilities, on a

lump-sum basis. Cost-plus bids will not be considered. The successful oil bidder will be a party to the construction contract to the extent of payment for the construction work.

You will find in the proposal submitted with Director Bain's letter of February 15, 1922, information regarding the estimated yield of these reserves, fuel oil specifications, etc., which will be helpful in considering the new plan of bidding.

Respectfully,

E. C. FINNEY,

First Assistant Secretary." [196—121]

Under date of February 16, 1922, Gano Dunn, President, the J. G. White Engineering Corporation, New York, wrote to H. Foster Bain, Director of the Bureau of Mines, Washington, the following letter, which was admitted in evidence as Plaintiff's Exhibit No. 82:

PLAINTIFF'S EXHIBIT No. 82.

"Dear Mr. Bain:

Your letter of the 15th and specifications were received in the mail this morning and Vice-Presidents Williams and Chilson of my company and I promptly had a conference with Mr. Doheny, Mr. Danzig, and Mr. Cotter for a thorough discussion of the specifications and preparations for putting in a bid.

We got all points settled as to our relations with Mr. Doheny's company under your specifications so that he will put in a bid for the whole work, taking a bid from us for the construction, which

(Testimony of E. C. Finney.)

he on your behalf will finance to us, our bid to him being in such form and subject to such Government requirements as will be acceptable to you. All inspection and discipline generally of us to be carried out directly by you or by Yards & Docks, the same as if our contract were directly with the Department of the Interior.

Having now the substance of our relations with Mr. Doheny settled, we are starting to embody them in our contract and proposal, which next week we will take up with you to make sure that we have correctly met your provisions. There are some features in the specifications that affect Mr. Doheny and us together but Mr. Cotter is going to take these up with you for us both.

On our part, we shall have no difficulty in having our bid ready by March 1st or considerably before that date.

Faithfully yours,

GANO DUNN,
President." [197—122]

In reply to the foregoing Dr. Bain's secretary, in the Director's absence, advised Mr. Dunn by letter dated February 17, 1922, that Dr. Bain would be in New York on the 24th of the month, at which time he would be glad to see Mr. Dunn. This communication was received in evidence as Plaintiff's Exhibit No. 83.

On February 17, 1922, Mr. Dunn from New York wrote a letter to Dr. Bain stating that Exhibit No. 80 had been received from Mr. Finney, and Mr.

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6
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(Testimony of E. C. Finney.)

Cotter had talked with Mr. Finney over the telephone and learned the general reasons for the delay; that they planned to come to Washington the following Monday to submit to Dr. Bain contract forms and other particulars for his review before putting them into final shape for formal submission, and this would be done unless Secretary Finney's letter changed these plans. Mr. Dunn's letter was put in evidence as Plaintiff's Exhibit No. 84.

This was followed by another letter from Mr. Dunn to Dr. Bain stating that the change in the situation, set forth by Mr. Finney's letter of February 17th (Exhibit No. 81), involving the question of lump sum versus fee bids, made it desirable for Mr. Dunn to meet Mr. Cotter in Washington as he had already planned, but that he would be in New York to see Dr. Bain when the latter was there. Mr. Dunn closed his letter by saying: "I assume that the specifications received represent your own views on the fee for services question and that anything I can say on the subject to Mr. Finney will have your approval if I go with Mr. Cotter to call on him as I should like to do." This letter was read as Plaintiff's Exhibit No. 85.

The witness testified that he recalls having a conversation with Mr. Dunn at or about the time indicated in the foregoing correspondence, that Mr. Dunn stated that he preferred and contended for the cost-plus plan, but as the witness had seen Admiral Gregory's letter and discussed the matter

(Testimony of E. C. Finney.)

with the Secretary and with Ambrose he advised Dunn that the Government would not change.

On February 21, 1922, witness signed another letter addressed to the parties to whom the letter of February 15th and telegram and letter of February 17th had been sent, advising them that the words "but not exceeding the value of the royalty oil already delivered" contained in his letter of February [198—123] 17th (Exhibit No. 81) should be disregarded, and that plans and specifications would be mailed about March 1st and bids were desired not later than March 15th. This letter was introduced in evidence as Plaintiff's Exhibit No. 86. Before it was sent Dr. Bain pointed out to the witness, in connection with the letter of the 17th (Exhibit 81) that the amendment to the conditions under which bids were asked would not be workable in that there was no obligation on the part of the person doing the constructing to build any faster than oil receipts came in; in other words, that they would only be obligated to proceed as fast as royalty oil came from the ground and was delivered and he suggested and advised the cancellation of the clause as was done by Exhibit 86; the matter was not taken up with anyone else before that letter was sent out on February 21st. For these technical matters witness relied on others as he is not an expert engineer or contractor; he gathered the general impression that the February 17th draft did not provide for the carrying on of the work any faster than the oil was received and

(Testimony of E. C. Finney.)

might have resulted in delays in building the tanks.

Judge Finney received from Mr. Cotter letter dated February 24, 1922, which enclosed one from Gano Dunn, President of the J. G. White Engineering Corporation, to E. L. Doheny of the same date, which two communications were read in evidence as one exhibit, Plaintiff's Exhibit No. 87, and are as follows: [199—124]

PLAINTIFF'S EXHIBIT No. 87.

"Dear Mr. Finney:

Receipt is acknowledged of your letter of February 21st, making a certain change in your letter of February 17th, and stating that detail plans and specifications covering the work referred to will be mailed about March 1st, and that it is desired that bids be mailed not later than March 15th.

Upon receipt of Director Bain's letter dated February 15th we took up this matter with the J. G. White Engineering Corporation with a view of obtaining from that Corporation a proposal to furnish all materials and do all work in accordance with the Navy Specifications, and with the thought that we would submit to the Department a proposal for completing the work and furnishing the desired amount of fuel oil at Pearl Harbor, we to be compensated for both the work done and the fuel oil furnished by delivery to us by the Government of crude oil produced in the California naval reserves. It was our intention to submit a bid under which we would agree to take this crude oil at the posted

price or at a price based thereon and to deliver the fuel oil at Pearl Harbor at the going market price or a price based thereon, plus a stated sum per barrel for transportation. Mr. Dunn, President of the J. G. White Engineering Corporation, had agreed to make us a proposal along the following lines:

They would agree to furnish all of the materials and do all of the work in accordance with the Navy's plans and specifications, and to the satisfaction of the naval officer in charge.

They would handle on a lump-sum basis all of the work possible to be done in that way. That is, they would call for lump-sum bids from sub-contractors for all work, the nature of which would render it possible for such bids to be made thereon. Upon receipt of such bids they would be submitted to the Secretary of the Interior or to the Secretary of the Navy as you may direct, and the bid in each instance selected by the Secretary would be accepted by the White Corporation. Mr. Dunn said that probably 75 per cent of the work could be done on this lump-sum basis; that probably 25 per cent, such as dredging, pile driving and grading, by reason of the fact that sufficient data are not available to make practicable the fixing of a definite sum for these items, would be done on force account, subject, of course, to the supervision and approval of the naval officer in charge.

We have planned that all payments for work done would be made by us, to the White Corporation upon the direction of the Navy officer in charge and

after his certification that such payments should be made by reason of the satisfactory completion of definite portions of the work. This plan contemplated that the J. G. White Engineering Corporation would receive a definite stated sum as a fee for its construction and engineering services and in the coordination and supervision of the work.

The foregoing seemed to be in consonance with the plan outlined in Director Bain's letter of February 15th. However, as of course you know, certain changes have since been made and it is my understanding from your letters and from my last conversation with yourself and Admiral Robison that what is now desired is a proposal from us along the lines set forth above except that the Department now wishes a lump-sum bid for the entire work. This the J. G. White Engineering Corporation cannot make, and consequently we cannot make such a proposal to the Department unless it is possible for us to find some other engineering or construction concern that would make such a proposal to us, and this seems to be doubtful. The difficulties in this connection are set out in a letter which Mr. Dunn has written and which I attach hereto. As Mr. Dunn and I are coming to Washington to see Admiral Robison on next Monday morning to discuss this matter, I am taking the liberty of sending the Admiral a copy of this letter.

Cordially yours,

J. J. COTTER."

"J. G. WHITE ENGINEERING CORPORATION.

Copy

February 24, 1922.

612947-690

[200-125]

E. L. Doheny, Esq., President,

Pan American Petroleum & Transport Co.,

120 Broadway,

New York.

Dear Sir:

We are unable under the conditions obtaining and with the information at hand to make a lump-sum bid under the plan of procedure and specifications issued by the Department of the Interior on February 15th, as modified by their letters of February 17th and February 21st, although prior to the receipt of the modifications we had completed a bid under the plan and specifications.

We are relying upon an interview with Admiral Robison next Monday morning to learn more fully his views and to put before him circumstances which may not have come to his attention in connection with the work near Honolulu which affect our position.

We appreciate the Navy Department's objections to 'cost plus' contracts, in which the contractor is paid a percentage on whatever the work costs. A dishonest contractor is induced in this way to multiply costs to increase his fees, or at least to be less careful.

Our proposal was not of this type, although I

may say almost the whole of our work for many years past has been under this type of contract.

We planned that three-fourths (the exact proportion to be determined in advance) of the Pearl Harbor job was to be executed under straight lump-sum bids, and not only this, but the conditions were to be such that although our client would be technically the Pan American Petroleum and Transport Company, there would be no relation in which the supervision, direction, and control of the Department of the Interior and of the Navy Department would be less than if our clients were they.

There is considerable work in the putting together of a large number of lump-sum contracts which cannot be determined accurately in advance and consequently cannot be covered by a lump-sum contract except under excessive percentages for contingencies in the nature of a contractor's safeguard.

Our proposal therefore was in the nature of lump-sum bids on three-quarters of the work with a fixed lump-sum fee for coordinating the whole and performing the remainder, which remainder also was to be as fully under the direction of the Department of the Interior and of the Navy Department as the other parts of the work.

The rigidity of relation brought about by lump-summing the remainder which does not lend itself to lump-summing is unfavorable to securing low costs for the other three-fourths and is also unfavorable to rapid completion.

Under the information supplied us unit price

contracts would subject the Government to indeterminate and possibly excessive costs in a similar manner to an abused cost plus contract.

We present these considerations to you as an interim observation pending our conversation with Admiral Robison and Assistant Secretary Finney next Monday morning.

Very truly yours,

GANO DUNN,
President."

Plaintiff next offered in evidence letter from H. Foster Bain, Director of the Bureau of Mines, to Mr. Gano Dunn, President of the J. G. White Engineering Corporation, [201—126] dated February 24, 1922 (Plaintiff's Exhibit No. 88), and telegram to Dr. Bain from Mr. Dunn dated February 25, 1922 (Plaintiff's Exhibit No. 89), which two exhibits read as follows:

PLAINTIFF'S EXHIBIT No. 88.

"Dear Mr. Dunn:

I find that the Navy Department has available for consideration of the construction work we have discussed a one-foot contour map of the site, with knowledge as to the amount of earth and rock involved in the excavation. The grades for all ditches and embankments have been fixed so that the land work can be calculated in advance as to quantities and character of material.

With regard to the marine work, soundings have been taken over the whole area and twenty-five test piles have been driven. It is believed sufficient ma-

terial is available to permit definite knowledge on the points we have discussed.

I have had a talk with your liaison officer, who comes from the Yards and Docks, and have asked him to discuss with his superiors the possibility of substituting for the fixed engineering fee one with penalty and bonus. I did this for the reason that I find that there was some feeling in that Bureau that the general contractor should have an inducement to cheapen the work. There is a little fear that he may not make the bidding on some contracts sufficiently open and might be a little too complacent as to high prices.

It is probable that to-morrow or next day I will have a conference with the Yards and Docks people and so may have more information by Monday.

Cordially yours,

H. FOSTER BAIN,

Director."

PLAINTIFF'S EXHIBIT No. 89.

"February 25, 1922.

H. Foster Bain, Esquire,

Director, Bureau of Mines, Washington, D. C.

Letter received. Willing undertake penalty and bonus contract. As per Cotter's telephone hope you can join him and me conference breakfast Willard eight o'clock Monday morning.

GANO DUNN." [202—127]

Early in March, 1922, amended plans and specifications were sent out calling for bids to be submitted April 15th. Mr. Finney had very little to do with

the preparing of these invitations of March; that matter was turned over to the Bureau of Mines to work upon in conjunction with the Navy; he thinks he went over the matter with Dr. Bain; he was interested more in the form and legal phases than technical details relating to the exchange of oils or of construction. On March 4, 1922, the following order was made in the Department (Plaintiff's Exhibit No. 90):

PLAINTIFF'S EXHIBIT No. 90.

"DEPARTMENT OF THE INTERIOR.

Washington, March 4, 1922.

ORDER.

Subject to the supervision of the Secretary, the Director of the Bureau of Mines will have charge of matters pertaining to and arising in connection with the care and administration of naval petroleum reserves, including the drilling and production of oil and gas therein. The Bureau of Mines will, of course, cooperate with other bureaus as to matters falling peculiarly within their province, so that there shall be no duplication of work performed or records kept.

ALBERT B. FALL,
Secretary."

Under date of March 7, 1922, letter prepared in the Bureau of Mines, initialed by Dr. Bain, and signed by the witness, was sent to all of the persons to whom the letter of February 15th (Exhibit No. 73) and the telegrams and letters of February 17th

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(Exhibits Nos. 80 and 81) had been sent, each letter being the same except for the change in the names of the addressees. One of these identic letters, dated March 7, 1922, was received in evidence as Plaintiff's Exhibit No. 91, and reads as follows: [203—128]

PLAINTIFF'S EXHIBIT No. 91.

"Dear Sir:

In accordance with my letter of February twenty-first, I send you herewith detailed plans and specifications covering the proposed exchange of Naval royalty oil for fuel oil in storage at Pearl Harbor. The large amount of additional information regarding the site and conditions under which the work will be done makes it desirable to alter slightly the plans which have been discussed. Accordingly the request for proposals has been entirely rewritten and the one sent herewith is to supersede all previous communications. Please make your proposals accordingly correspond with the plans and specifications sent herewith. Since you may wish time to study local conditions in Hawaii the time for receipt of bids has been set ahead to April fifteenth, and telegraphic correction of bids up to and including April fourteenth will be permitted.

Respectfully,

E. C. FINNEY,

First Assistant Secretary."

The enclosure transmitted with the foregoing letter was introduced in evidence as Plaintiff's Exhibit No. 92 and reads:

PLAINTIFF'S EXHIBIT No. 92.

"PROPOSALS FOR EXCHANGE OF NAVAL
OIL.

GENERAL CONDITIONS.

1. The Secretary of the Interior invites proposals for acceptance of royalty crude oil accruing to the Government from leases in Naval Petroleum Reserves No. 1 or No. 2 in the State of California or both, in exchange for:

(a) Storage facilities to be provided by the bidder at Pearl Harbor, Hawaii, according to the conditions and specifications hereto attached.

(b) 1,500,000 barrels, or as much thereof as the Secretary may require, of Fuel Oil, according to the specifications hereto attached and made a part hereof this notice, delivered into said storage within the period specified herein, for the possession and use of the United States Navy.

2. Bids, stated in barrels of oil, may be made separately or jointly for the storage facilities (a), and the oil in storage (b). In event that separate bids are made and accepted the Secretary reserves the right to pro rate deliveries of oil to the two bidders in such ratio and under such terms as he may consider equitable.

3. Bidders for furnishing the storage facilities shall state their bids in terms of acceptance of barrels of crude California oil of 14° to 17° gravity at the average field price per barrel from Nov. 1 to Dec. 31, 1921, but agree to accept in payment such various grades as the leases may yield and the Secretary may deliver, and the quantities called for under the bids are to be adjusted to correspond with

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the actual grades delivered and actual market prices of the date of delivery, or any higher price that may be mutually agreed upon between the Secretary, representing the Government, and the successful bidder.

4. The storage, when completed or as completed is to be filled with fuel oil of a grade specified as herein provided upon the following basis of exchange:

1 bbl. crude oil
in field.

Gravity (Baume) to equal the number of barrels of fuel oil as hereinafter specified:

14° to 17.9° — bbls. of fuel oil in tanks at Pearl Harbor.

18° to 18.9° — bbls. of fuel oil in tanks at Pearl Harbor. [204—129]

19° to 19.9° — bbls. of fuel oil in tanks at Pearl Harbor.

20° to 20.9° — bbls. of fuel oil in tanks at Pearl Harbor.

21° to 21.9° — bbls. of fuel oil in tanks at Pearl Harbor.

22° to 22.9° — bbls. of fuel oil in tanks at Pearl Harbor.

23° to 23.9° — bbls. of fuel oil in tanks at Pearl Harbor.

24° to 24.9° — bbls. of fuel oil in tanks at Pearl Harbor.

25° to 25.9° — bbls. of fuel oil in tanks at Pearl Harbor.

26° to 26.9° — bbls. of fuel oil in tanks at Pearl Harbor.

27° to 27.9° — bbls. of fuel oil in tanks at Pearl Harbor.

28° to 28.9° — bbls. of fuel oil in tanks at Pearl Harbor.

29° to 29.9° — bbls. of fuel oil in tanks at Pearl Harbor.

For each increase in gravity of one (1) full degree above 30° gravity up to and including 34.9° gravity, — barrels additional.

35° gravity and above — barrels in tank at Pearl Harbor.

(Note: Carry above to third decimal place.)

Said ratio of exchange to cover all and every expense incident to the exchange and movement of the oil from field to storage. The bidder may supply the fuel oil in storage at any rate he may elect provided that it be all provided and the transaction completed within the period during which the Government is delivering to him crude oil in the field under this contract. Fuel oil delivered by the bidder in storage in advance of receipt by him of the equivalent crude in the field to be and remain the property of the bidder until the Government shall have furnished to the bidder the equivalent crude required by the exchange agreement; provided that any fuel oil delivered in advance of exchange shall be subject to purchase by the Navy at the Honolulu market rate of the date of purchase.

5. Any bidder proposing separately to furnish the oil in storage shall agree that for any crude oil in the field or pipe line certificates delivered to him by the Government in advance of readiness of the

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Pearl Harbor storage herein provided for, he will on request of the Secretary furnish to the Navy Fuel Oil at Pacific Coast ports, on such terms and ratio as he may indicate in his bid.

6. Proposals will be received on the basis of payment in oil from Naval Petroleum Reserves No. 1 and No. 2 together or separately. It is estimated that the oil from No. 1 will accrue at the rate of 600,000 to 650,000 bbl. per annum and from No. 2 at the rate of 500,000 to 600,000 bbl. per annum. In event that the bidder elects to receive payment in oil from No. 1 alone the Secretary of the Interior agrees to allocate from the royalty oil accruing from the leases in said reserve 6,000,000 bbls. of royalty crude oil, or as much thereof, as may be necessary to cover equities accruing to the successful bidder or bidders under the contract or contracts herein contemplated. In event that the successful bidder or bidders elect to take oil from Naval Petroleum Reserve No. 2 only, the Secretary will agree similarly to allocate 4,000,000 bbl. or as much thereof as may be necessary. In event that the successful bidder or bidders elect to take payment in oil from both reserves, the Secretary will allocate 3,000,000 bbl. of oil from Reserve No. 1 and 2,000,000 bbl. from Reserve No. 2, or so much thereof as may be necessary to satisfy the equities accruing under the contracts to be made. The bidder or bidders agree to take the oil, month by month, as it is furnished by lessees, in satisfaction of this contract or contracts, until all claims thereunder are satisfied. The Secretary reserves the right to deliver at a greater or less rate than above estimated according as the various leases

yield. In event that the leases already granted or which may hereafter be granted shall fail to yield an amount of oil approximate to the estimate herein made, or that decrease of production shall occur and exist such as shall tend to prolong the term of this contract unduly, then the Secretary of the Interior will in his discretion grant additional leases on such lands as he may designate, sufficient [205—130] to maintain royalty oil deliveries as nearly as may be to approximately 500,000 bbl. per annum.

7. Upon signing of a satisfactory agreement the Secretary of the Interior will turn over to the successful bidder the oil which has accumulated since November 1, 1921, and now being held by certain pipeline companies amounting to about 40,000 bbl. of 28° gravity oil and 62,000 bbl. of 20° gravity oil as of January 1, 1922. All oil delivered is to be credited on account as advance delivery by the Government, to be valued as of the market price at point of delivery of the month produced as against later delivery by the successful bidder of storage facilities or fuel oil in advance of delivery by the Government of the equivalent amount of oil in exchange, to the end that the credits measured in barrels per month shall be equalized. In final settlement of the contract to be hereinafter made and executed any advance credit on either side not so equalized shall be adjusted on the basis of interest at a rate to be proposed by the bidder, the amounts due to be determined on daily balance and to be paid in oil.

8. The Secretary invites proposals upon the basis of lump sum bids to include all charges to be made

against the Government in connection with the contract that may be made for provision of the storage facilities, and a bid expressed as herein provided in ratio of exchange of crude for fuel oil covering the furnishing of the latter in the storage when provided. In event that any proposer finds it unacceptable to make a lump sum bid covering every item in the work of providing storage facilities, he may offer such alternative as he may care to suggest; provided that such alternative proposal be supported by acceptable bids for lump sum sub-contracts covering at least two-thirds of the work. In event that any bidder desires he may similarly offer an alternative bid for providing the fuel oil in storage, not stated in fixed terms of a ratio of exchange per barrel but such alternative offer must be clearly stated, must be complete, and must provide for payment by exchange for crude royalty oil in the field.

9. The successful bidder for providing the oil in storage shall execute a satisfactory personal or surety bond, as determined by the Secretary of the Interior, to the amount of \$100,000 for full and complete performance of all acts under such agreement covering said furnishing of fuel oil as may be entered into. The successful bidder for providing the storage facilities shall furnish such bond as is provided in Section 259 of the specification of provision of storage facilities attached. The successful bidder for both items jointly shall furnish such bond, not exceeding the sum for the two above specified, as the Secretary may require.

10. The time within which the storage facilities

must be furnished shall be 500 calendar days, subject to penalty and bonus for lump sum bidders as in Item 5 of the attached specifications. Bidders are asked to propose a time not greater than 500 days within which they will undertake to complete such work and to which the same penalty and bonus provision shall apply. Proposers of alternative plans, as in Sec. 8, may suggest time, penalty and bonus in making their proposals. As between otherwise equal bids the one offering the shorter period of construction will be favored. The period for the agreement or agreements as a whole shall extend to cover the entire time necessary for the Government to deliver to the successful bidder or bidders the amount of oil necessary under the agreement or agreements to cover all liability to the Government under said agreement or agreements.

11. The Secretary reserves the right to reject any or all bids.

12. For any further information application should be made to the Secretary of the Interior, Washington, D. C.

13. Bids shall be opened on April 15, 1922, at noon, and shall be marked: (Proposals for Exchange of Naval Oil."

PROPOSALS.

Proposals shall be submitted in accordance with the requirements of the General [206—131] Conditions and the Specifications attached, including General Provisions, upon the following items:

Item 1. Net time of providing storage facilities, and number of barrels of oil as specified in Section

3 of General Conditions, for both providing and filling storage in accordance with the drawings, specifications, and conditions herewith.

Item 2. Net time and number of barrels of oil, as specified in Section 3 of General Conditions, for providing the storage facilities complete in accordance with the drawings, specifications, and conditions herewith.

Item 3. Ratio of exchange of field oil for fuel oil for filling the Pearl Harbor storage under conditions herein, and for furnishing fuel oil *ad interim* at other Pacific Coast terminals as provided in Section 5 of the General Conditions.

Bidders on Items 1 and 2 shall also state:

(a) Amount to be added to or deducted from the net amount of oil bid, for each concrete pile in excess of or less than the number indicated in the drawings, based on a length of 45 feet per pile.

(b) Amount to be added to or amount to be deducted from the net amount of oil bid, for each linear foot of concrete pile in excess of or less than 45 feet per pile.

(c) Net amount of oil per cubic yard (based on dredging as measured in place) to be added to or deducted from the amount bid, as the actual dredging required may differ in amount from that estimated in the bid as called for in section 160 of the specifications.

(d) Amount of oil per cubic yard (based on dredging as measured in place) to be added to the amount bid, for any yardage dredged which shall be found to consist of rock.

Alternative bids on the various items may be made as provided in Section 8 of the General Conditions.” [207—132]

Attached to the foregoing were the regular Navy specifications for fuel oil, the quantity being as specified as 1,500,000 barrels. The foregoing Exhibit 92, and the fuel oil speculations, and printed detailed specifications for the Pearl Harbor construction work, as well as the letter of March 7, 1922 (Exhibit 91), it was stipulated in open court were sent in exactly the same form to the Pan American Petroleum & Transport Company, the Standard Oil Company of California, the Associated Oil Company of California, the J. G. White Engineering Corporation, New York, and Ford, Bacon & Davis, San Francisco, counsel for the Government agreeing “that full information went to all of them.”

Neither Secretary Fall nor Dr. Bain at any time discussed with the witness the question what persons should receive those papers. He knew that they had been sent to the five companies which had been named because he signed the letters and telegrams to them in February.

From San Francisco on March 28, 1922, there was addressed to the witness a telegram from H. M. Storey, Vice-President of the Standard Oil Company, to which he replied from Washington under date of March 31st; these two telegrams were received in evidence as Plaintiff's Exhibits 93 and 94, respectively, and read as follows:

PLAINTIFF'S EXHIBIT No. 93.

"Hon. E. C. Finney,
Ass't Sec'y, Dept. of Interior,
Washington, D. C.

Referring to our recent conversation. We have given considerable thought to your proposal in the hope that we might offer some suggestion that would be of aid. We are now led therefore to offer the following: 'We are willing to accept naval reserve royalty crude oil from the government at the well and in exchange therefor deliver fuel oil at tide-water to the United States Navy, the United States Shipping Board, or such other agency as the government may designate.' We are not sure that this suggestion will be of interest but feel that we would like you to know just what we can do.

STANDARD OIL CO.

H. M. STOREY,

Vice-Prest."

PLAINTIFF'S EXHIBIT No. 94.

"H. M. Storey,
Standard Oil Company,
San Francisco, California.

Department feels that matter should be handled under specifications and plan heretofore submitted and cannot consider bid as suggested in your telegram.

FINNEY,
First Assistant Secretary." [208—133]

(Testimony of E. C. Finney.)

The conversation referred to in Mr. Storey's telegram took place in the witness' office in Washington some time in March, 1922. To the best of witness' recollection Mr. Sutro, the attorney for the Standard Company, and Dr. Bain were also present, and Sutro and the witness had some discussion regarding the law; Mr. Storey is not a lawyer and stated his views from the standpoint of a layman and Mr. Sutro expressed a doubt as to the right of the Department to carry through such an arrangement. Mr. Sutro and witness had something of a discussion of the law; the latter took from his bookshelf the statutes, particularly that containing the clause in the Naval Appropriation Act of June 4, 1920, and read the clause, line by line, emphasizing what he thought were the pertinent words; there was an argument back and forth which lasted for some time, Mr. Sutro expressing an opinion or a doubt as to the authority of the Department to pay for storage and fuel oil in storage by that method, and Judge Finney expressing the opinion that the law did warrant the Department in making such an arrangement because of its language. During that conversation witness does not think Mr. Storey definitely stated that his company would not bid on the proposals that had been sent out, but he expressed some doubt about it, relying, no doubt, on the advice of his attorney, Mr. Sutro. Mr. Storey may have said that it was doubtful whether they would bid but witness does not recall the exact language. It was some time later when the Sutro

(Testimony of E. C. Finney.)

written opinion was first shown the witness.

There was received at the Department letter dated March 3, 1922, which with its enclosure was not shown to the witness when it was received, and which was acknowledged under date of March 4, 1922. The said letter and acknowledgment, being Plaintiff's Exhibits Nos. 95 and 96, read as follows: [209—134]

PLAINTIFF'S EXHIBIT No. 95.

"FORD, BACON & DAVIS,

Incorporated.

115 Broadway, New York.

March 3, 1922.

Mr. H. Foster Bain, Director,
Bureau of Mines, Department Interior,
Washington, D. C.

Dear Sir:

I take pleasure in enclosing herewith copy of Mr. Sutro's opinion on the legality of the proposed oil exchange.

Will you be kind enough to send me two sets of blueprints and two sets of specifications for the oil storage facilities?

Mr. Storey advises me that he will arrive in New York this coming Sunday and expects to be in Washington on Tuesday.

Very truly yours,

CHARLES N. BLACK."

PLAINTIFF'S EXHIBIT No. 96.

"March 4, 1922.

Colonel Charles N. Black,
c/o Ford, Bacon & Davis, Inc.,
115 Broadway,
New York, N. Y.

Dear Colonel Black:

I am greatly obliged to you for the copy of Mr. Sutro's opinion which I am having studied here. I think we will be able to arrange a form of bidding which will meet the principal objections he has in mind, and I am sure we can back our plan with good legal opinion, since the matter happens to have been examined by attorneys outside as well as inside the service. I will give you the results later.

Meanwhile I note your request for two copies of the plans and specifications. We expect now to be able to send them out on Monday or possibly as late as Tuesday. I will be glad to see that copies reach you promptly.

I am delighted to know that Mr. Storey is coming East and will look forward with great pleasure to having the opportunity to discuss the situation with him here on Tuesday.

Cordially yours,

H. FOSTER BAIN,
Director." [209 $\frac{1}{2}$ —135]

Judge Finney was advised of Mr. Sutro's opinion on the occasion of the latter's visit in March and some time later, between that time and the 15th of April, Dr. Bain told him that he had had a conversation with Mr. Weil of the General Petroleum

(Testimony of E. C. Finney.)

Company in California and that Mr. Weil had expressed an opinion adverse to the proposed plan.

A lease covering approximately 142 acres in Section 34-30-24 east of M. D. M., Naval Reserve No. 1, between the United States and the Belridge Oil Company, under the Act of June 4, 1920, had been authorized prior to April 15th but was executed as of April 24, 1922, which indicated to the witness that it was actually signed after the latter date. This lease was signed on behalf of the Government by Mr. Finney as First Assistant Secretary of the Interior and by officers of the lessee on behalf of the Belridge Oil Company; when the written application of that company for a lease was filed Judge Finney took the matter up with the Bureau of Mines and discussed its various features, and then took it up orally with Secretary Fall, and explained briefly to him the proposition, its proposed acreage, its relation to adjoining privately owned lands, and the royalty which had been suggested, and the Secretary verbally agreed to the making of the lease, which was thereafter executed as above stated. This lease was admitted in evidence as Plaintiff's Exhibit No. 97. There was no advertisement and no competitive bidding for that lease.

Under date of February 8, 1922, a lease between the United States, signed on its behalf by the witness, was entered into with the Pan American Petroleum Company; that was awarded after competitive bidding, that company's bid being the best received; it recites that it is a lease under the provisions of the Act of June 4, 1920, and covers ap-

(Testimony of E. C. Finney.)

proximately 142 acres in the northeast corner of Section 2-31-24 east, M. D. M. It was received in evidence as Plaintiff's Exhibit No. 98.

Under date of February 8, 1922, a lease was entered into between the United States, the witness signing on its behalf, and the Pan American Petroleum Company for a strip of land in Section 2-31-24, immediately to the south of strip theretofore leased, so that the two covered the north half of that section; this lease of February 8, 1922, was made on a sliding scale of royalties, ranging from 12½ to 25 per cent, known as the Department's regulation royalties. [210—136] Regarding this lease the witness testified that when bids were received for a lease on the north strip of Section 2, as already testified to by him, he had an examination made of the records and found that all of Section 2 was covered by a pending application under the placer mining laws, which application was in the name of White and Coffin; they claimed a deposit of Fuller's earth; that application was pending before the local land office at Visalia, California; under the Department's rules another filing or lease on top of a pending application cannot be allowed; the pending application has to be disposed of first and the records clear; witness was about to take some steps for considering or adjudicating the above-mentioned pending mineral application when he received a letter from Mr. Cotter stating that his company, the Pan American, had acquired the White and Coffin mining application, and shortly thereafterwards Mr. Cotter made a proposal that

(Testimony of E. C. Finney.)

his company would convey to the United States title to the whole of Section 2 under the mining title if his company was given, under the leasing law, a lease to the whole of Section 2, outside of the north strip which had been the subject of bidding; witness prepared a written memorandum addressed to the Secretary reciting the facts and pointing out that to clear the records of the mining application by the ordinary procedure, which would involve probably a hearing and trial in the local office and the right of appeal, would take considerable time, and suggested the acceptance of a compromise offer which would expedite action on the pending leases. The Secretary authorized the leasing of the south half of the north half of Section 2 in accordance with that suggested memorandum. Thereupon a lease was made with the Pan American Company for the north 1173 ft. of Section 2 under that company's bid, specifying royalties on a sliding scale from $12\frac{1}{2}$ to 35 per cent on oil below 30 degrees Baume, and from $12\frac{1}{2}$ to 45 per cent on oils above that grade; and another lease, in consideration of the quitclaim of the White and Coffin title to the Government, for the remainder of the north half of Section 2 upon the regulation scale of royalties ranging from $12\frac{1}{2}$ to 25 per cent, that being the Department's standard scale of royalties in the settlement of mining claims. This lease was admitted in evidence as Plaintiff's Exhibit 99.

Under date of March 25, 1922, W. R. Ramsey, assignee of United Midway Oil Land Company, assigned to the Pan American Petroleum Company

(Testimony of E. C. Finney.)

the two leases theretofore awarded that company and its assignee and hereinbefore referred [211—137] to, which assignments to the Pan American Company were forwarded to the Secretary of the Interior by the Commissioner of the General Land Office with recommendation that they be approved, and they were each approved by E. C. Finney, First Assistant Secretary of the Interior, under date of April 7, 1922. The papers evidencing these assignments and the approval thereof were received in evidence as Plaintiff's Exhibits 100 and 101. By the middle of April, after the foregoing assignments, the only two lessees in Naval Reserve No. 1 were the Pan American Petroleum Company and the Beldridge Oil Company. In addition to advertising for offsetting strip leases already testified to, there had been an advertisement for bids for some offsetting near the center of the Reserve No. 1 surrounding what is called the Standard Oil Company's Section 36; these leases were to be of strips in Section 6 and Section 25 in that township, but no leases for these lands were awarded as no satisfactory bids were received. On April 15th witness had not heard of any other leases nor proposed leases except those he has already referred to.

Prior to the middle of April Judge Finney mentioned to Secretary Fall the discussion he had had with Mr. Sutro, but the Secretary agreed with Finney's view rather than with Mr. Sutro's; in other words, the witness and Mr. Fall both agreed that this thing was legal. This conversation between Mr. Finney and Mr. Fall was some time

(Testimony of E. C. Finney.)

after the former had his conversation with Mr. Sutro in March, 1922, and was prior to April 13th of that year because Mr. Fall left the Department and the City of Washington on April 13th to go to New Mexico. A few days before the Secretary's departure, Dr. Bain and Mr. Finney were in his office and Mr. Fall asked them how the proposed Pearl Harbor matter was getting along; they told him that the bids were not to be opened before April 15th; he expressed some disappointment, witness thinks, at that, stating that he desired to close the Teapot-Sinclair matter and this matter at the same time or about the same time, and was a little impatient, apparently, at the delay in the Pearl Harbor matter. Dr. Bain and Mr. Finney explained that the delay had been occasioned by the various changes which were made in the specifications; that it had been necessary to give considerable time to the Pearl Harbor matter so that the bidders could appraise themselves as to the conditions and that the last order had fixed April 15th as the day of the opening of bids and that bids could not be opened before that time. The [212—138] Secretary did not make any suggestion as to any other way of closing the matter up other than by waiting until the bids came in and were opened. Plaintiff thereupon offered in evidence, as Plaintiff's Exhibit No. 102, letter addressed to the Honorable Edwin Denby, Secretary of the Navy, dated April 12, 1922, reading as follows: [213—139]

PLAINTIFF'S EXHIBIT No. 102.

"My dear Mr. Secretary:

We have had some difficulty and delay in the matter of contracts for the construction of storage tanks at Pearl Harbor, for the following reason, to wit: The construction companies have no use for oil and can not, of course, take our crude oil and exchange fuel oil therefor. The oil companies, with whom such exchange must be made, are not engaged in such construction work as appears to be necessary to provide the storage at Pearl Harbor. The consequence has been that we must submit for bids propositions to the oil companies, and they in turn must submit bids based upon naval specifications, not only for the purchase of tanks, etc., but also for the purpose of doing the necessary construction by way of dredging, wharfage, excavation, cement work, etc. Our proposition, therefore must necessarily involve a profit on the construction to be made by the oil company in addition to any profits in oil exchange. If we were in a position to effect the oil exchange, upon the one hand, and having established a credit, to use the cash derived from such credit with which to make our own contracts, we would thus save the profits which will be made by the oil companies.

For the reasons above given I have drawn a proposal amendment to be attached to line 8, page 25, of the naval appropriation bill (or to be attached to any other proper paragraph in said bill), which amendment reads as follows:

'Provided further, That storage of fuel oil

from naval oil reserves may be provided either by exchange of oil for such storage or (and) by sale of royalty oil in sufficient amount and the payment of the proceeds thereof for such necessary storage facilities'—

And a copy of which I am handing you.

You will note that the amendment by its terms recognizes our right to obtain storage through exchange of oil, but further authorizes us to sell royalty oil and obtain storage with the proceeds of such sale. If adopted, this will save a great deal of trouble, and in the present cases which we are considering might save the Government several hundred thousand dollars—possibly half a million dollars.

I am therefore holding up the proposed contracts indirectly by taking abundant time for the consideration of bids, etc., with the hope that meantime this amendment may be adopted and that we may obtain the results suggested by the large saving which I am confident will accrue.

If you agree with me in this matter, would you have the amendment presented to Mr. Kelley with your approval? I am confident that should you see your way clear to take such action the Congress would unhesitatingly adopt the amendment. It may or may not be necessary to go fully into the details of what we are trying to do at Pearl Harbor; of course impressing Congress with the view that too great publicity should not be given to the subject.

Very sincerely yours,

ALBERT B. FALL." [214—140]

(Testimony of E. C. Finney.)

It was agreed between counsel for the parties that the Mr. Kelley referred to in the above letter was Honorable Patrick H. Kelley, member of Congress from Michigan, at the time chairman of the Sub-Committee on Naval Appropriations of the house of Representatives. The witness testified that he does not recall having been familiar with the preparation of the above letter or having at that time any discussion with the Secretary about it; nor did he discuss at about that time with Secretary Fall the question of whether a proviso in the naval appropriation bill such as mentioned in the above letter would cure any invalidity in the exchange of fuel or royalty oil. With reference to the mention in Exhibit 102 of contracts touching the naval reserves, the day Secretary Fall left Washington he showed Mr. Safford, his Administrative Assistant, and the witness a copy or copies of contract relating to the naval reserve in Wyoming, known as the Teapot Dome, stating that he was leaving it in his desk and giving Mr. Safford the key to the drawer of the desk. The witness' recollection is that Secretary Fall did not desire to give out information with respect to that contract until after the Pearl Harbor matter had been closed. The Secretary at the time stated that he had executed the Mammoth Oil contract on Teapot Dome.

Under date of April 12, 1922, there was addressed

to Secretary Denby the following letter, introduced in evidence as Plaintiff's Exhibit No. 103: [215—141]

PLAINTIFF'S EXHIBIT No. 103.

"My Dear Mr. Secretary:

I thank you for handing me the telegram from the Chicago Bridge & Iron works. A similar telegram was received by myself this morning and immediately replied to. I am herewith returning the telegram which you transmitted to me, with a copy of my reply to their message to me, which I think will certainly satisfy the protestants.

This, however, is but an illustration of the difficulties which we have to contend with when we must contract with constructors through an oil company rather than being enabled to contract directly, as will be the case if the amendment to the appropriation bill, which I have called to your attention this morning, should be adopted.

In other words, if we could make our personal contract with the oil companies and thus having a line of credit established then contract direct through competitive bids or otherwise, with the construction companies such as the Chicago Bridge & Iron Works, we would save money.

Of course, these parties merely do not understand the situation.

Very respectfully yours,

ALBERT B. FALL."

The telegram referred to in the foregoing is dated Chicago, Illinois, April 12, 1922, is Plaintiff's Exhibit No. 104, and reads:

PLAINTIFF'S EXHIBIT No. 104.

"Honorable Albert B. Fall,
Secretary of Interior,
Washington, D. C.

We understand the Interior Department has invited a selected list of bidders to submit bids privately at noon next Saturday, April 15, covering the construction of fuel oil storage plant at the United States naval station, Pearl Harbor, Hawaii. This work has not been advertised and has been handled with the utmost secrecy. We sent a representative from our New York office to Washington last week who was refused a set of plans and specifications covering this work and was advised pointedly that the Interior Department did not wish to have us bid. This seems almost unusual procedure for a Government department, and we are wiring this protest, urging that immediate steps be taken to postpone the opening of bids on this work and the awarding of the contract until other reputable contractors may be given an opportunity to prepare and submit bids. Will appreciate your kindness in wiring answer promptly at our expense as time is short and quick action must be taken.

CHICAGO BRIDGE & METAL WORKS."

To that reply dated at Washington, April 12, 1922, was sent, which reply is Plaintiff's Exhibit No. 105, and reads:

PLAINTIFF'S EXHIBIT No. 105.

"Chicago Bridge & Iron Works,
Chicago, Ill.

You are informed that neither this department nor Navy Department have solicited privately or otherwise, bids from any construction companies whatsoever for any oil-storage construction at Pearl Harbor or elsewhere. Under the law we are simply compelled to deal directly with oil producers for exchange crude for fuel oil including storage. Several oil companies have been bidding under the law, and I understand possibly Associated Oil, Pan American, and Standard of California may all offer bids. No publicity has been given, as we regard it no one's business particularly as involving military naval plans. It is possible one of these oil companies or others may be soliciting subcontracts material and construction. We know nothing of it. We can not entertain your protest nor is same or any criticism warranted.

FALL,
Secretary."

April 12, 1922, the following telegram was sent from Chicago, the same being Plaintiff's Exhibit No. 106: [216—142]

PLAINTIFF'S EXHIBIT No. 106.

"Hon. Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Thanks for your telegram. We are advised that the Pittsburgh-Des Moines Steel Co., of Pittsburgh,

Pa., have been furnished plans and specifications on the Pearl Harbor fuel oil plant. This company is one of our chief competitors, and if the above report is true feel that we have a perfectly good right, as a tax-paying American corporation, composed of American citizens to protest for not being given an opportunity equal to that afforded our competitors to bid on Government contract work. While not familiar with the law you refer to, can not understand why if we are willing to accept contract on basis of furnishing fuel oil in exchange for crude oil, why we should not be given the same opportunity to bid as oil producers. We fully appreciate the necessity of not divulging Government military plans to the public and assure you we are not endeavoring to invade the private military plans of the Navy, but simply asking for the same consideration that is being accorded our competitors.

CHICAGO BRIDGE & IRON WORKS."

Secretary Denby addressed to Secretary Fall on April 12, 1922, a letter which enclosed a telegram addressed to the Secretary of the Navy, in substance the same as above Exhibit 104; Mr. Denby's letter, offered in evidence as Plaintiff's Exhibit No. 107, reads as follows:

PLAINTIFF'S EXHIBIT No. 107.

"My dear Mr. Secretary:

Enclosed herein I send you a telegram just received from the Chicago Bridge & Iron Works, Chicago, Ill., with reference to bids for the con-

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struction of a fuel oil storage plant at Pearl Harbor Naval Station, to which no reply has as yet been made.

Sincerely yours,

EDWIN DENBY."

Telegram dated Chicago, Illinois, addressed to Secretary Fall was received as Plaintiff's Exhibit No. 108 and is as follows:

PLAINTIFF'S EXHIBIT No. 108.

"Honorable Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Our clients Chicago Bridge and Iron Works have handed us your telegram April 12th regarding Pearl Harbor fuel oil plant in which you state that under the law you are simply compelled to deal directly with oil producers for exchange crude for fuel oil including storage stop. Please wire our expense immediately what law you refer to stop. We do not know of any law giving oil producers greater rights in bidding on government work than are enjoyed by other bidders willing to accept same conditions.

AF 12.

DYRENFORTH, LEE, CRITTON and
WILES,

Attorneys.

Telegram from Chicago dated April 14th was introduced as Plaintiff's Exhibit No. 109 and follows:

PLAINTIFF'S EXHIBIT No. 109.

"Hon. Secretary Fall,
Department of the Interior,
Washington, D. C.

Please wire our expense reply to our wire of April twelfth regarding government work at Pearl Harbor.

DYRENFORTH, LEE, CRITTON &
WILES." [217—143]

On April 15, 1922, there was sent from the Department of the Interior in Washington the following telegram (Plaintiff's Exhibit No. 110):

PLAINTIFF'S EXHIBIT No. 110.

"Dyrenforth, Lee, Chritton & Wiles,
Attorneys, Chicago, Ill.

You wires twelfth and fourteenth interest Chicago Bridge and Iron Works Company received absence Secretary Fall. Before leaving he wired your clients fully regarding matter referred to. In addition Chicago Bridge & Iron Works Company took up this matter through Senators McCormick and McKinley to whom replies in detail by letters signed by Director Bain, Bureau of Mines, at direction of Secretary, were sent and no doubt forwarded to Bridge Company.

C. V. SAFFORD,
Administrative Assistant."

To this reply dated at Washington April 17, 1922, Plaintiff's Exhibit No. 111, was addressed to Mr. Safford, reading:

PLAINTIFF'S EXHIBIT No. 111.

"Dear Sir:

We acknowledge receipt of your wire of April 15, replying to our wires of the 12th and 14th. In the wire received by our clients from Secretary Fall, he referred to a particular law under which the department was proceeding. If it is not too much trouble, we would be very much pleased to have you give us the number, name, date, etc., of this law, so that we can locate it in our library here.

Thanking you in advance for this information, we remain

Yours very truly,

DRYENFROTH, LEE, CHRITTON &
WILES.

By M. A. HIRSCHL."

At the foot of the above exhibit there is this notation in pencil: "Representative called and Mr. Safford explained to him."

As Plaintiff's Exhibit No. 112 two telegrams, dated April 13, 1922, the first from East Chicago, Indiana, and the second from Washington, were read in evidence, as follows:

PLAINTIFF'S EXHIBIT No. 112.

"Hon. Albert B. Fall,

Secretary of Interior Department,
Washington, D. C.

We are informed Interior Department is receiving private bids for oil station plant for Pearl Harbor. We have seen no published bids for this work

(Testimony of E. C. Finney.)

and wish to have privilege for bidding on all or part.

Will you please advise at our expense?

GRAVER CORPORATION,

P. S. GRAVER,

Vice-President."

"Graver Corporation,

East Chicago, Ind.:

Interior Department is not receiving bids for construction. Parties proposing to handle naval reserve oils are, I understand, negotiating with constructors. Matter to which you refer is the handling of the naval oil for the United States Navy through cooperation Interior and Navy Departments. Storage of same involves construction but bids are only solicited or received from operating oil companies or parties proposing to operate oil lands and furnish fuel oil in exchange, the same to be placed in permanent storage.

FALL,

Secretary." [218—144]

Secretary Fall did not refer any of these inquiries to Mr. Finney nor discuss them with him. Mr. Finney became acquainted with the foregoing telegraphic correspondence at some later date, he thinks after April 15th, but he does not recall distinctly.

On April 12, 1922, Secretary Fall addressed the following letter to the Secretary of the Navy (Plaintiff's Exhibit No. 113):

PLAINTIFF'S EXHIBIT No. 113.

"My dear Mr. Secretary:

I am herewith handing you one of the triplicates

of the contract between the Mammoth Oil Company upon the one hand, and myself and yourself upon the other.

You have signed this contract in duplicate, one copy of which has been delivered to the Mammoth Oil Company, and the other is retained for the files of this office. The third, an exact triplicate, only lacks your signature, and I am handing it to you for your files.

The original retained by this office has attached to it deeds from the 'Belgo Oil Company,' 'Pioneer Oil Company,' etc., to the Mammoth Oil Company; quitclaim deeds of the Mammoth Oil Company to the United States for various lands in the Teapot Dome; also authorization of the Mammoth Oil Company for the execution of these deeds and the execution of the contract; also a temporary bond, approved by myself, to be submitted later upon demand, said bond being in the sum of \$250,000.

I am also handing you a copy of memorandum which I have made for the government of my staff in giving out any information concerning these contracts.

You will note that this memorandum simply states the general policy; distinguishes between the handling of naval oils and other governmental royalty oils; states the necessity for following the present policy, and states generally what we are doing through the exchange of crude oils for fuel oils.

I am also attaching a memorandum setting forth in very brief outlines, the salient provisions of the Mammoth Oil contract, which I am handing you.

I have instructed my office force to give out nothing of the details of any of these contracts and to retain in a secure place the original contract with the deeds, etc. attached. This for the reason that it has been customary to file all contracts with the general files, where by inadvertence they might be subject to examination by parties not entitled to see them.

I am particularly anxious that no details should be given out pending the final agreement upon the contracts for the construction of reservoir facilities in Hawaii.

Very sincerely yours,
ALBERT B. FALL."

With the foregoing there was enclosed a memorandum read in evidence as Plaintiff's Exhibit No. 114, as follows:

PLAINTIFF'S EXHIBIT No. 114.

"DEPARTMENT OF THE INTERIOR,
Office of the Secretary.

April 13, 1922.

MEMORANDUM:

Referring to constant requests for information concerning rumors or statements [219—145] as to disposition of naval reserve oil lands:

The general policy in these matters has been given publicity. In carrying out this general policy as it is being carried out through the cooperation of the Navy Department and of the Interior Department, it is being handled by the Secretary of the In-

(Testimony of E. C. Finney.)

terior and the Secretary of the Navy but not in a routine manner by either department. The consequence is that the officials of the bureaus of either department are not able to give out any information whatsoever as to the detail of any plans of any kind or character." [220—146]

The other two enclosures with Exhibit No. 113 consist of a brief on the Mammoth Oil Company lease.

As Mr. Finney already stated, Secretary Fall on the day he was leaving Washington, April 13th, or the day before, said that he did not desire information given out as to the Mammoth contract until the Pearl Harbor matter was closed; witness saw or was given a copy of the memorandum last above quoted which was issued for the guidance of the officials of the Department and which he followed by not giving out information.

Judge Finney opened bids received April 15, 1922; there was a stenographer present to make a memorandum and in brief the stenographer's memorandum is an accurate statement of what happened and who were present. Thereupon as Plaintiff's Exhibit No. 115 the said memorandum was read in evidence and is as follows:

PLAINTIFF'S EXHIBIT No. 115.

"April 15, 1922.

Meeting held in the office of Acting Secretary Finney, Department of the Interior, at 12 o'clock noon, April 15, 1922, for the purpose of opening bids for the furnishing of 1,500,000 barrels of fuel

oil in storage and the construction of storage facilities at Pearl Harbor, Hawaii. There were present the following:

Mr. J. J. Cotter, representing the Pan American Petroleum & Transport Co.; Mr. Gano Dunn, representing the J. G. White Engineering Corporation; Secretary to Mr. A. C. McLaughlin, representing the Associated Oil Co.; Mr. J. C. Hammack and Mr. J. C. Trimble, representing the Pittsburg-Des Moines Steel Co.; Mr. E. M. Talcott, representing W. R. Grace & Co.

There were also present Messrs. Bain, Ambrose, Tough, and Campbell of the Bureau of Mines.

The Secretary said: I have before me three bids. It may be that some other bids are in the mails and have been received somewhere in this department, which is rather a large one, as you know. They may be upstairs, but of course in the event the bid was in the mails and received in time, we will reserve the right to open it and consider same, although not here at this moment.

I will now proceed to open the bids which are before me.

The first bid opened, which I have marked 'A,' is signed by H. M. Storey, vice-president of the Standard Oil Co.

The second bid opened, which I have marked 'B,' is from the Pan American Petroleum & Transport Co., and comprises two papers, proposal A and alternative proposal B.

The third bid, which I have marked 'C,' is signed

(Testimony of E. C. Finney.)

by the Associated Oil Co., Sharon Building, San Francisco, Calif.

The Secretary then read the substance of the bids, and thereafter said:

Bids will be carefully considered and the conclusion of the department announced later, of which bidders will be advised." [221—147]

Thereupon there was offered and received in evidence as Plaintiff's Exhibits 116, 117, 118a and 118b the bids which were received and opened on April 15th as reported in the foregoing memorandum, said exhibits being, respectively, as follows:

Bid of the Standard Oil Company dated San Francisco, California, April 3, 1922, signed by the company per H. M. Storey, Vice-President, addressed to the Secretary of the Interior, stating that the Standard Oil Company will enter into a contract with the Government, agreeing to accept total amount of the Government's royalty crude petroleum oil produced in either or both naval reserves Nos. 1 and 2, but shall not be obligated to accept more than 20,000 barrels in any one day or 300,000 barrels in one month. In exchange for said royalty crude oil Standard Oil Company will agree to deliver into the tankage of the Government at Pearl Harbor, Hawaii, and/or into tank ships of the Government at the company's dock, Richmond, California, and/or into tank ships of the Government at the company's dock, San Pedro, California, a quantity of fuel oil equivalent in value to the royalty crude oil delivered by the Government to the company. For the purposes of the

(Testimony of E. C. Finney.)

contract, the value of the royalty crude oil delivered thereunder shall be the prices the Standard Oil Company may offer from time to time to producers in the Midway-Sunset oil field, Kern County, California, for crude oil of like gravity, and the value of the fuel oil delivered thereunder shall be the Standard Oil Company's current selling prices for fuel oil at places of delivery, Pearl Harbor, Richmond, or San Pedro. The bid gives the prices offered by the company for crude oils of various gravity in the Midway-Sunset oil field at the date of the proposal and also the then prevailing prices of fuel oil at the places of proposed delivery. The ratios of exchange as of the date of the proposal are set forth together with statement of what fraction of a barrel of fuel oil will be exchanged for each barrel of crude. It is provided that whenever and as often as and while at any time during the period of the contract the prices offered by the Standard Oil Company to producers in the Midway-Sunset oil field for crude oil of like gravity, or the Standard Company's selling prices for fuel oil at the points hereinbefore specified, shall be higher or lower than the prices herein set forth, as of the date of this proposal, then said ratio shall be changed to correspond with such higher or lower prices. The Standard [222—148] Oil Company will undertake to make advance deliveries of fuel oil at Pearl Harbor, Richmond, and San Pedro in excess of the receipts of royalty crude oil, but such advance deliveries shall not at any time exceed the quantity of fuel oil due the Government by more

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(Testimony of E. C. Finney.)

than 100,000 barrels. In the event the Government does not take delivery currently of its fuel oil, the company will undertake to carry the surplus fuel oil due the Government as a credit to the Government, free of charges, in an amount not to exceed 500,000 barrels. Deliveries of fuel oil at Pearl Harbor shall be made from vessels into Government's pipe-line connected with Government's tankage in quantities and at times mutually satisfactory, but the company shall not be obligated to deliver less than 60,000 barrels in any one cargo. Deliveries at Richmond and San Pedro shall be into Government's tank ships at the Standard Company's docks and shall not exceed 70,000 barrels in any one day at either point or 300,000 barrels per month. The bid recites the specifications of the fuel oil. A surety bond of \$100,000 for performance is tendered. It is provided that the proposed contract shall be for a period of four years from its date unless the tankage at Pearl Harbor shall be filled before the expiration of four years in which event contract may be terminated by either party on thirty days' notice.

Bid of the Associated Oil Company is dated San Francisco, California, April 15, 1922, and is signed by the company per A. C. McLaughlin, Vice-President, is addressed to the Secretary of the Interior, and, in substance, proposes that "Subject to ratification and/or confirmation by Congress of the authority of the Secretary of the Interior and/or the Secretary of the Navy, to agree to exchange and/or to exchange oil produced from the naval petroleum

(Testimony of E. C. Finney.)

reserves for storage facilities and appurtenances, the Associated Oil Company, hereby proposes to furnish all material and construct the fuel oil storage plant called for in full compliance with the" plans and specifications sent out under cover of letter dated March 1, 1922, "to be located at the United States naval station, Pearl Harbor, Hawaii, and proposes to furnish 1,500,000 barrels of fuel oil into said storage; and said Associated Oil Company proposes to accept as payment" crude oil from Naval Reserve No. 2 in quantities specified in the bid which also provided that the quantity would increase or decrease with changes in the posted field prices and would differ as the gravity of the oil differed. [223—149]

Pan American Petroleum & Transport Company's Proposal A is in substance, as stated by counsel for plaintiff and agreed by counsel for the defendants, in strict accordance with the invitation for bids and for a larger number of barrels of oil than that company's Proposal B, the comparison of the two proposals, it being agreed by counsel for the parties in open court, being accurately shown in Plaintiff's Exhibit 119, *infra*, and Pan American Petroleum & Transport Company's Proposal A, it is further stated and agreed, does not contain the clause found in Proposal B which agrees to give the Government the benefit of any saving in cost, and does not contain the provision for a preferential right. Counsel for both parties agree that these are the only three material differences between Proposals A and B. Proposal

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(Testimony of E. C. Finney.)

A was received as Plaintiff's Exhibit 118a and Proposal B, received as Exhibit 188b, is set forth in full following Exhibit "B" to the Amended Bill of Complaint.

The witness Finney thereupon testified that after he had opened the bids and there had occurred the proceedings set forth in the above-quoted memorandum, he turned all of the bids over to Mr. Ambrose and Dr. Bain of the Bureau of Mines with directions to study them and submit a report and recommendation; that was on Saturday, April 15, 1922; he received a report back in the shape of a memorandum from Mr. Ambrose on April 17th, which memorandum the witness identified and it was thereupon offered in evidence as Plaintiff's Exhibit 119 and is as follows: [224—150]

PLAINTIFF'S EXHIBIT No. 119.

"April 17, 1922.

Memorandum to Secretary Finney:

Bids on the Pearl Harbor fuel oil storage project were opened in the office of Secretary Finney at 12 o'clock noon, April 15, 1922. The three sealed bids received were (A) Standard Oil Co. of California, (B) Pan American Petroleum & Transport Co., consisting of two proposals, and (C) Associated Oil Co.

The following table gives a comparison of the different bids with an estimate made by Lieutenant Keating, of the Navy Department, of the cost of the storage facilities at Pearl Harbor":

And then he states them.

"Bid	Company	Barrels Royalty Oil	Present Value Royalty Oil	Interest Rate for Advance- ments Per cent	Extras
A	Standard Oil Co.				
B1	Pan American Petroleum & Transport Co.	6,092,709	\$6,701,979.90	5	Same in B1, B2 and C.
B2	do	5,878,905	6,466,795.50	5	
C	Associated Oil Co.	6,201,903	6,822,093.30	5	do
D	Navy Department estimates	5,850,000	6,435,000.00		

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Bid (A) — Standard Oil Co. of California.

This bid was confined to the exchange of royalty crude oil for fuel oil at Pearl Harbor on an exchange basis according to prices at the date of delivery of crude oil to the pipe line company. There was no offer for the erection of storage facilities.

Bid (B) — Pan American Petroleum & Transport Co.

Proposal (A) — This company agrees to erect and fill the storage at Pearl Harbor for 6,092,709 barrels of 14° to 17.9° crude oil which at the present price of \$1.10 per barrel equals \$6,701,979.90. The proposal for an increase or decrease in the proposal sum of 6,092,709 barrels of crude oil in case of an increase or decrease in the number of piles, the length of the piles and the amount of dredging, is expressed in barrels and according to Lieutenant Keating of the Navy the figures are reasonable. This proposal provides interest for advancements by the Government or the contractor at the rate of 5 per cent per annum.

Proposal (B) — The company agrees to erect and fill the storage at Pearl Harbor for 5,878,905 barrels of 14° to 17.9° gravity crude oil which at the present price of \$1.10 per barrel equals \$6,466,795.50. The bid regarding increase in the number of piles, increase or decrease in length of piles, dredging, rate of interest, etc., are the same as in proposal (A) above. The company further agrees in case this bid is granted, to give the Government any advantage which may result in the construction and erection of storage facilities for lesser cost

than represented by the number of barrels of 14° — 17.9° oil used in estimating the cost of erection and construction of the storage facilities. Proposal (B) is made on the condition that if accepted the Secretary of the Interior will agree to give the company preferential right to drill any lands within naval petroleum reserve No. 1, California, which the Government may decide to lease.

Bid (C) — Associated Oil Co.

The Associated Oil Company agrees to erect and fill the storage at Pearl Harbor for 6,201,903 barrels of crude oil of 14° to 17.9° gravity which at the present price of \$1.10 per barrel equals \$6,822,093.30, but limits the oil that it will [225—151] take to naval reserve No. 2. The proposal of this company for additional costs due to length of concrete piles, increase in number of piles, amount of dredging, is expressed in dollars and is the same as both bids of the Pan American Petroleum & Transport Co., which are expressed in terms of barrels of crude oil. The Associated bid also goes into considerable detail regarding their interpretation of the excavation, filling, electrical work, etc., but Lieutenant Keating has stated that practically all of their interpretations are satisfactory. The statement regarding the method of computing the ratio which a barrel of fuel oil at Pearl Harbor will bear to the crude oil delivered in the field for different changes in price, is not believed to be a proper interpretation, but it is thought that in case the Associated Oil Co. is granted the bid, this ratio can be expressed in a way entirely satisfactory to

both parties. The rate of interest on all amounts advanced by either party, proposed by the Associated Oil Co. is 5 per cent, the same as that proposed by the Pan American Petroleum & Transport Co.

Comparison of Bids.

The bid of the Standard Oil Co. of California is confined to the exchange of royalty crude oil for fuel oil at Pearl Harbor, based upon current field prices of crude oil and the posted price of the Standard Oil Co. for fuel oil at Honolulu. It is not believed that this is any better exchange than that offered by either the Associated Oil Co. or the Pan American Petroleum & Transport Co.

It is believed that both proposals submitted by the Pan American Petroleum & Transport Co. are better than the bid of the Associated Oil Co. for the following reasons: (1) The highest bid (proposal A) of the Pan American Petroleum & Transport Co. is \$120,113.40 less than the bid of the Associated Oil Co. and the lowest bid (proposal B) of the Pan American is \$355,297.80 less than that of the Associated Oil Co. (2) The Associated Oil Co. proposes to take only oil from naval reserve No. 2. This would extend the life of this contract to perhaps a period of eight years while the Pan American Petroleum & Transport Co. proposes to take the oil from both reserves Nos. 1 and 2, in which case, the contract would not have a life of over four or five years. (3) The rate of interest for advancement by either the Government or the contractor is the same in the bids of both companies and also the increase

or decrease in number of piles, length of piles and dredging is the same.

The difference in the two proposals submitted by the Pan American Petroleum & Transport Co. is as follows: In proposal (A) they will do the entire job for 6,092,709 barrels of 14° to 17.9° gravity oil, which at the present price of \$1.10 per barrel is valued at \$6,701,979.90, while in the second proposal (B) they will fulfill the contract for 5,878,905 barrels of the same grade of oil which at the present price of \$1.10 is \$6,466,795.50, provided that in proposal (B) they will give the Government any benefit in saving which may be effected in handling this job, and provided that this company gets the preferential right to drill any land in naval reserve No. 1 which the Secretary decides to lease. It therefore is reduced to a matter of deciding whether or not the Secretary decides to grant this preferential right to the Pan American Petroleum & Transport Co. and make certain that the job will be accomplished at a saving of \$235,184.40 less in proposal (B) than in proposal (A).

Recommendations.

It is recommended that proposal (B) of the Pan American Petroleum & Transport Co. be accepted for the following reasons: (1) It is the lowest bid submitted. (2) The Pan American Petroleum & Transport Co. has drilled leases already granted to them in naval reserve No. 1, in a manner satisfactory to the Department of the Interior. (3) By granting the preferential right to drill any leases granted in naval reserve No. 1 the department is

certain of a direct saving of 235,184.40, and inasmuch as this proposal provides for giving the Government any benefit of a saving accomplished by doing the work at a less cost than estimated, the Government also has a possibility of saving more than \$235,184.40. (4) The meaning of the term "preferential right" should be clearly outlined in the contract and should be stated somewhat as follows: The term "Preferential right" means that the contractor is given a right to drill such leases in naval petroleum reserve No. 1 as the Secretary [226—152] may decide to lease, provided that the contractor makes an offer to drill up any tract requested by the Secretary according to the terms and conditions approved by the Secretary of the Interior, and in the event that the Secretary desires to drill a certain tract of land that the contractor does not meet the royalty or other requirements of the department, then this tract of land shall be thrown open to competitive bidding and the Secretary of the Interior shall award the tract drilled to the highest bidder. The contractor shall have a right to bid in the competitive bidding, but the term "preferential right" does not in any event mean that the contractor has the right to drill the land under the highest competitive bid submitted, because if this were allowed the second time a tract was thrown open to bid the Government would not have any bidders.

It should be further agreed to in this contract that the preferential right should extend only to leases to be granted to protect interests of the Gov-

(Testimony of E. C. Finney.)

ernment during the life of this contract and the acreage should be limited to what is practically the east half of naval reserve No. 1, or that land located in T. 30 S., R. 24 E., and T. 31 S., R. 24 E.

A. W. AMBROSE."

When Judge Finney received the foregoing report from Mr. Ambrose he called Ambrose and Admiral Robison into conference in his office; he does not recall distinctly whether Dr. Bain was there or not, but does remember distinctly that Ambrose and Robison were there; he discussed the matter with them and on the same day wired Secretary Fall, who was at his home in Three Rivers, New Mexico, the following telegram (Plaintiff's Exhibit No. 120):

PLAINTIFF'S EXHIBIT No. 120.

"Washington D. C., April 17, 1922.

To Hon. Albert B. Fall,

Three Rivers, New Mexico.

California reserve bids received and opened Saturday. Standard bid was for exchange only. Associated bid for oil in number two reserve only, six million two hundred and one thousand nine hundred barrels. Pan American bid oil from both reserves, six million, ninety-two thousand seven hundred barrels, with an alternative Pan American bid, five million eight hundred and seventy-eight thousand and nine hundred barrels, if given preference for drilling required by government in future in reserve number one. Pan American bid also advantageous, in that it provides for reduction in cost in case storage facilities erected for less money than estimated.

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In opinion Ambrose, Robison and myself, Pan American alternative bid best offered and should be accepted.

Referring telegram Safford and myself this morning, regarding Kendrick resolution. Similar demand for report had been made upon Secretary Denby. Denby desires complete publicity Navy Department's part in opening naval reserves. Suggest you authorize closing contract with Pan American. Details will require approximately three or four days to arrange. On conclusion this contract suggest you publish complete information concerning opening of all reserves. In any event, suggest you telegraph your desires to Secretary Denby at once.

If you agree with recommendation regarding California reserves, why not authorize me by wire to make award, and yourself immediately make public the entire disposition of all naval reserve contracts, with reasons therefor.

FINNEY,
SAFFORD."

Plaintiff thereupon offered in evidence as its exhibit No. 121 the reply to the foregoing, which is a telegram reading: [227—153]

PLAINTIFF'S EXHIBIT No. 121.

"Three Rivers, New Mexico, April 18, 1922.
Finney and Safford,
Interior Department,
Washington D. C.

Telegram Number Two reference California bids, if Admiral Robison and Secretary Navy think best

(Testimony of E. C. Finney.)

close immediately on basis Pan American deal and if authorized by Denby proceed immediately award and close contract and make public entire policy in fullest and completest manner.

Reference Wyoming oil you authorized if think best also give publicity concerning present status contract Shipping Board and my announced policy offering all royalty oils for sale with principal object to bring third competitor into Wyoming fields with other pipe lines and refineries and obtain highest prices for oils. Of course in giving publicity emphasize fact Mammoth Oil Company presented deeds for all outstanding claims of title of every character.

FALL,
Secretary,"

The witness then testified that upon receipt of the foregoing telegram he gave notice of the award on the 18th of April and he identified and there was thereupon offered in evidence as Plaintiff's Exhibit No. 122, the following letter:

PLAINTIFF'S EXHIBIT No. 122.

"Department of the Interior,

Washington, April 18, 1922.

Pan American Petroleum & Transport Co.,

120 Broadway, New York City, N. Y.

Gentlemen: Your bid filed April 15, 1922, for the exchange of Government royalty oils from naval reserves Nos. 1 and 2, California, for fuel oil and storage for naval purposes at Pearl Harbor, Hawaii, has been examined in connection with other bids sub-

(Testimony of E. C. Finney.)

mitted, and your alternative bid B found to be the lowest and best bid received. Accordingly award is hereby made to you of said contract, per your alternative bid B. Formal contract is being prepared for execution.

Respectfully,

E. C. FINNEY,

Acting Secretary," [228—154]

Mr. Finney had never heard that any preferential right was desired in Naval Reserve No. 1 by any bidder for this Pearl Harbor contract prior to April 15, 1922, nor until after the bids were opened on that day. There was no discussion at the time of the opening in his presence of the probability or likelihood of any future leasing. On April 18, 1922, when he sent the letter last read in evidence (Exhibit No. 122), he does not think or recall that he had, up to that time, heard of any additional leasing to be done in Naval Reserve No. 1. Immediately after April 18th there was started the preliminary work of getting up contract, this being done in the Bureau of Mines in conjunction with the Navy; sometime between the 18th and 23d there was a conference in Mr. Finney's office at which, in addition to himself, were present Mr. Cotter, Admiral Robison, Mr. Ambrose, and possibly one or two others, with respect to the proposed lease or contract, and at that time there was discussed the question of a preferential right for leasing certain areas. Mr. Cotter wanted some definite understanding or stipulation written into the contract as

(Testimony of E. C. Finney.)

to areas which would be leased and a time limit fixed. That was discussed between Mr. Ambrose, Admiral Robison and Judge Finney, and it was finally tentatively agreed at least that within one year from the date of the contract the Government would award a lease to the northeast quarter of Section 3 of the reserve, 160 acres, and to a strip of the east half of Section 34 just west of the Belridge lease, covering probably 140 or 150 acres, at royalties running up from 12½ to 45 per cent. As regards how that happened to be made the subject of a letter outside of the contract, the witness believes Mr. Cotter wanted some definite assurance in writing and it is "our practice as a rule, or my practice at least," to put those things in writing; he is not clear as to why it was not included in the formal contract; it was possibly because the rough draft of the contract had been made or because it was satisfactory to Mr. Cotter to have it in a letter. Mr. Finney dictated the draft of the letter of April 25, 1922 (Exhibit "E" to Amended Bill of Complaint), in the presence of Mr. Ambrose and Admiral Robison; he thought it desirable to advise Secretary Fall as to the matter, and as to all details relating to the proposed contract, and on April 20th he sent Mr. Ambrose to Three Rivers to acquaint Secretary Fall with all the details in the matter. Mr. Ambrose took with him a copy of his memorandum report to the [229—155] witness analyzing the bids (Exhibit 119 above), the proposed form of contract, and possibly a copy of the April

(Testimony of E. C. Finney.)

25th letter, though the witness is not clear as to whether Ambrose took a copy of that letter, but Ambrose knew what was to go in the letter and was instructed to talk the matter over with Secretary Fall; he was also instructed to ask Secretary Fall as to jointure of Secretary Denby in the contract; there had been some discussion as to that between Mr. Cotter and Mr. Finney in which discussion Mr. Cotter stated that he believed the Secretary of the Navy should be specifically a party, both in the body of the contract and by way of signature at the end, and Judge Finney rather agreed with Mr. Cotter's view; so Mr. Ambrose was also to ask Secretary Fall with respect to that. The witness identified a telegram dated at Three Rivers, New Mexico, April 23, 1922, as received by him, and the same was introduced in evidence as Plaintiff's Exhibit No. 123, and reads:

PLAINTIFF'S EXHIBIT No. 123.

"Finney,

Acting Sec'y Interior, Washington, D. C.

Ambrose arrived. Have consulted reference all contracts, as to both contracts go ahead. New appointment to be executed by you.

FALL, Sec'y."

The new appointment referred to in the foregoing telegram is in no way connected with the matters in this case.

On April 25, 1922, the witness as Acting Secretary of the Interior signed the contract, which was immediately sent over to Secretary Denby and was

(Testimony of E. C. Finney.)

signed by him on that or the next day, and the same was formally delivered. Thereupon there was offered and received in evidence as Plaintiff's Exhibit No. 124 contract between the United States and the defendant Pan American Petroleum & Transport Company, in words and figures as set forth in Exhibit "B" to the Amended Bill of Complaint. There were also offered and received in evidence as Plaintiff's Exhibit No. 125 letter dated April 25, 1922, which witness had referred to, and which is in words and figures as set forth in the Amended Bill of Complaint, as Exhibit "E." [230—156]

Plaintiff's said Exhibit No. 126 consists of several hundred printed pages of detailed specifications, covering minutely all of the construction work required under the contracts of April 25, 1922, and December 11, 1922, in issue in this case, and it was stipulated that said work had been generally described by Admiral Gregory in his testimony. Plaintiff's counsel stated that there was no part of this exhibit considered material except the paragraphs set forth below, and with the consent of defendants' counsel and the approval of the Court, the substance of said paragraphs were read as follows:

From specifications for work under April 25th, 1922, contract: [231—156-A]

Par. 12. Before commencing installation of any work the contractor shall submit to the Secretary of the Interior for approval drawings showing complete details of all reinforced concrete, pump in-

(Testimony of E. C. Finney.)

stallations, shop details of tanks, etc. Par. 132. Details of the foam fire protection system to be installed by the contractor shall first be submitted to and approved by the Secretary of the Interior before such installation. Par. 210. "The successful bidder will be the party of the first part to the contract and will be known as the contractor, and the Secretary of the Interior will be the party of the second part and known as the Government." Par. 215. "The work will be under the general direction of the Secretary of the Interior * * * appeals may be made to the Secretary of the Interior." Par. 225. Applications for extension of time on the part of the contractor must be made to the Secretary of the Interior through the officer in charge and the contractor agrees to accept the decision of the Secretary of the Interior as binding. Par. 227. In ascertaining liquidated damages which the contractor must forfeit by reason of delays, the Secretary of the Interior will determine what delays in the receipt of materials by the contract were unavoidable and therefore excused. A certified copy of the contractor's record of orders for materials must be made available to the Secretary of the Interior in determining the above question. Par. 229. The Secretary of the Interior may declare the contract null and void if it evidently cannot be completed within the prescribed time, or if the contractor commits a breach thereof. If the contract is annulled a board of U. S. officers shall determine the value of the work done by the con-

(Testimony of E. C. Finney.)

tractor, plus a reasonable profit allowable thereon. The Secretary of the Interior has the right to approve such findings and to approve the inventory which the board shall prepare of materials, tools, etc., belonging to the contractor, which said findings and inventory when so approved will be conclusive in an accounting between the parties. If the work is thereafter completed by the Government, the cost of completing same shall be determined, and when approved by the Secretary of the Interior shall also be binding upon the parties. Par. 230. The Government reserves the right [232—156-B] to make changes in the plans, specifications and contracts, and the cost of such changes when approved by the Secretary of the Interior shall be added to or deducted from the contract price. The contractor agrees to proceed with such changes as directed in writing by the Secretary of the Interior. Par. 231. The contractor's claims for extras will be referred to the Secretary of the Interior for approval and the finding of the Secretary shall be conclusive. Par. 236. Any violation of the eight-hour day law coming to the notice of Government officers will be reported to the Department of the Interior for such legal action as may appear warranted. Par. 237. Special or detailed plans, whenever it is necessary for the contractor to prepare them, must be submitted to the officer in charge or to the Secretary of the Interior, as may be directed, for approval. Par. 241. If conditions at the site of the work are dis-

(Testimony of E. C. Finney.)

covered to be different from the plans and specifications, a report shall be made to the Secretary of the Interior, who will determine whether a change in the contract price is to be made. If made it will be adjusted as per paragraph 230. Par. 255. Before the first payment is due the contractor must furnish to the officer in charge a schedule of prices of materials. This will be forwarded to the Secretary of the Interior and after his approval will govern the preparation of monthly estimates. Par. 256. Monthly vouchers covering all work done and materials furnished during the month shall be prepared by the officer in charge, certified by the contractor, and "forwarded to the Secretary of the Interior for approval and for crediting on account toward the delivery of the proper amount of oil in accordance with the terms of the exchange." The final payment shall not be made until the contractor shall deliver a release of all claims against the Government in such form as shall be approved by the Secretary of the Interior. Par. 258. The contractor shall furnish to the officer in charge for the information of the Secretary of the Interior, statements showing the substance of all subcontracts. Par. 259. Bids must be accompanied by certified checks payable to the Secretary of the Interior as a guarantee that the bidder will not withdraw his bid except with the approval of the Secretary of the Interior, and that if successful he will execute a [233-156-C] contract and give bond satisfactory to the Secretary of the Interior, and

(Testimony of E. C. Finney.)

will return same to the Secretary of the Interior within ten days after forms are furnished to him.

Par. 265. Prospective bidders are requested to report to the Secretary of the Interior for correction or interpretation before the date of opening of bids, any errors or omissions which they observe in the drawings and specifications.

The specifications for work under contract of December 11, 1922, contain, *inter alia*, paragraphs which in substance are:

Preamble: States that the specifications which form a part of the contract No. 4,800 are prepared by the Chief of the Bureau of Yards and Docks "under authority of the Acting Secretary of the Interior as given in his letter dated May 5, 1922 * * *."

Paragraph 11. Before installing any work "the contractor shall submit to the Secretary of the Interior for approval drawings showing complete details of all reinforced concrete, pump installations," etc. Paragraph 274. Work shall be under the general direction of the Secretary of the Interior. Appeals may be made to the Secretary of the Interior. Paragraph 283. Applications by the contractor for extensions of time are to be transmitted by the officer in charge to the Secretary of the Interior for action. Failure of the contractor to submit such applications within thirty days of the happening of a cause of delay may be construed by the Secretary of the Interior as a waiver by the contractor of his right to an extension. Decisions of the Secretary of the Interior on applications are

(Testimony of E. C. Finney.)

to be conclusive. Paragraph 285. In ascertaining liquidated damages for delays, the secretary will determine what delays in the receipt of materials by the contractor were unavoidable and therefore excused. A copy of the contractor's records of orders for materials must be made available to the Secretary of the Interior. Paragraph 288. The Government reserves the right to make changes in the contract, etc., and the contractor agrees to proceed with same as directed in writing by the Secretary of the Interior. Paragraph 293. Violations of the eight-hour day law are to be reported to the Department of the Interior for such legal action as may be deemed warranted. Paragraph 294. Whenever it is necessary to prepare special or detailed plans, copies of same must be submitted for approval to the officer in charge or to the Secretary of the Interior, as may be directed. Paragraph 298. If changed conditions are encountered [234—156-D] during the work, a report of same will be submitted by the officer in charge through official channels to the Secretary of the Interior, "who will decide what changes are to be made." Paragraph 312. Before the first payment is due the contractor must furnish to the officer in charge a schedule of prices for all work covered by lump sum subcontracts. This will be forwarded to the Secretary of the Interior, and after his approval will govern preparation of monthly estimates. Paragraph 315. As soon as the contractor has executed any subcontracts he shall furnish a state-

(Testimony of E. C. Finney.)

ment showing substance of same to the officer in charge for the information of the Secretary of the Interior. [235—156-E]

Continuing, Mr. Finney testified that, as he has stated, the Secretary, in the fall or early winter of 1921, stated that he desired Dr. Bain and the witness to conduct the call for offers for the exchange of oil and construction of storage; that was the beginning; when the various small leases were made in Sections 1 and 2, about which he has testified, witness conferred with the Secretary before acting upon the applications; then in the spring of 1922 after the bids were opened he wired on April 17th to the Secretary with respect to the award (as shown in telegram, Exhibit No. 120 above); on April 20th Mr. Ambrose was sent to the Secretary to acquaint him with the details and the witness received the telegram of April 23d (Exhibit 123 above) authorizing him to execute the contract; the witness regarded the matter as being one of importance, involving the policy of the Department, so he did not take any independent action but consulted with the Secretary before acting and received his authority. There were no other invitations for bids issued than those on which the bids of April 15th were based.

Plaintiff thereupon offered and there was received in evidence its Exhibit No. 127, reading as follows:

PLAINTIFF'S EXHIBIT No. 127.

"May 29, 1922.

The Honorable,

The Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

Pursuant to a letter of April 25, 1922, of the Acting Secretary of the Interior and the Secretary of the Navy, application is hereby made for Oil and Gas Lease for the NE. $\frac{1}{4}$ Sec. 3, T. 31 S., R. 24 E., MDM., Naval Petroleum Reserve No. 1, California.

It is considered that drilling upon this land at this time is necessary in order to protect same from drainage in drilling on lands outside the Naval Reserve immediately cornering this section.

Respectfully,

PAN AMERICAN PETROLEUM &
TRANSPORT CO.

By J. J. COTTER." [236—157]

Plaintiff's Exhibit No. 128, being lease dated June 5, 1922, in words and figures the same as Exhibit "F" to the Amended Bill of Complaint, was thereupon offered and received in evidence.

It was thereupon stipulated and agreed by the parties that shortly after the date of the foregoing lease the same was with the consent of the United States assigned by the defendant Pan American Petroleum & Transport Company to the defendant Pan American Petroleum Company and the latter assumed all of the obligations and rights of the original lessee thereunder.

(Testimony of E. C. Finney.)

The witness Finney continuing, testified that shortly after the execution and delivery of the contract of April 25, 1922, there was a conference in his office at which, in addition to himself, there were present Mr. Dunn of the White Engineering Corporation, Mr. Cotter of the Pan American Company, Mr. Ambrose of the Bureau of Mines, and someone from the Navy, he is not certain whether it was Admiral Robison, Admiral Gregory or Lieutenant Keating; an officer named Lieutenant Keating, a member of the Construction Corps of the Navy, had been appointed as liaison officer to work between the two Departments; one of the questions discussed was how disputes could be settled in case disputes arose between the contractor and the officers of the Navy or of any department; Mr. Dunn was very anxious and insisted that the umpire or final arbiter should be the Secretary of the Interior. As a result there was written the following letter, dated at Washington, May 5, 1922, signed by the witness as Acting Secretary of the Interior and approved by Secretary Denby of the Navy, which letter as Plaintiff's Exhibit No. 129 was read in evidence, as follows: [237—158]

PLAINTIFF'S EXHIBIT No. 129.

"The Secretary of the Navy.

Dear Mr. Secretary: April 25, 1922, the Navy and Interior Departments entered into a contract with the Pan American Petroleum & Trans-

port Co. for the exchange of crude oil for fuel oil in storage at Pearl Harbor. It is important that work under this contract begin at the earliest possible moment and that the method of procedure and supervision be agreed upon between the two departments. In that connection I submit for your consideration and approval, if you agree, the following:

Contract consists of two principal parts. The first is the exchange of crude oil for fuel oil to be delivered in tankers at Pearl Harbor. The second part is the construction of oil storage and the receiving of oil in the tanks at Pearl Harbor.

The Department of the Interior shall retain direct control of the oil business involved in this contract; in other words, of the first part of the contract mentioned above.

The Chief of the Bureau of Yards and Docks, Navy Department, Admiral L. N. Gregory, is designated as the representative of the Secretary of the Interior in handling the second part of the contract as noted above. This involves, first, all technical matters in connection with the plans and specifications for storage, and which in its general phases can be most expeditiously handled in Washington; second, the supervision of construction work in the field at Pearl Harbor; and third, the receiving of the oil at Pearl Harbor from the tankers and placing same in tank storage as it becomes available under this contract until such time as the completed plant shall be turned over to the Government.

(Testimony of E. C. Finney.)

The Secretary of the Interior expressly reserves at all times the right to recall the foregoing representation and to designate a successor from the Navy Department as his representative. The right of the contractor to appeal to the Secretary of the Interior, as provided in the contract, is not affected hereby. Notice of any appeal by the contractor from the decision of the officer in charge of the work and the reasons therefor shall be forwarded promptly, being routed through the commandant and the Chief of the Bureau of Yards and Docks on their way to the Secretary of the Interior. This will in no way involve the functions at present exercised by the Chief of the Bureau of Engineering in dealing with the Secretary of the Interior in regard to oil matters in general, since the only function of the representative of the Secretary of the Interior would be the technical work of constructing the tanks, the receiving and storing of the oil during construction, and reporting to the Secretary of the Interior the amounts received.

Respectfully,

EDWARD C. FINNEY,

Acting Secretary.

Approved:

EDWIN DENBY,

Secretary of the Navy." [238—159]

Judge Finney did not have anything personally to do with keeping accounts under the contract of April 25th, they were kept by officers and em-

(Testimony of E. C. Finney.)

ployees of the Bureau of Mines and he is not familiar with them. During the time he has been First Assistant Secretary of the Interior the only leases that he knows of that were issued in which he did not participate in some way, unless absent from Washington, were the Sinclair lease for lands in Naval Reserve No. 3 in Wyoming and the lease for Reserve No. 1 dated December 11, 1922; he had no participation whatever in the negotiations for or the execution of that lease or the contract of that date.

Plaintiff offered and there was received in evidence as its Exhibit No. 130 the lease dated July 28, 1922, between the United States and the Pan American Petroleum Company, and it was stipulated that this document was merely a consolidation into a single lease of three small strip leases heretofore referred to in the evidence whereby one lease was made of the three on the same royalties and terms.

As regards certain leases made in 1922 and 1923 for lands in Naval Reserve No. 2, the witness testified that in March, 1922, a call was made for bids for the leasing of five tracts of land in Naval Reserve No. 2, which five tracts were free from all mining claims or applications of any kind; bids were to be received on or prior to a date in May, 1922; nine bids were received, not nine for each tract but nine for some of the more likely tracts, and several bids for each tract, except for the east half of Section 30 in the north part of Reserve 2

(Testimony of E. C. Finney.)

which was regarded as very doubtful and on which only one bid was received. The bids of Louis Titus for four of the tracts were the highest and best. [239—160]

In connection with the testimony of the witness Finney, and as a part of his direct examination, by stipulation the royalties specified in leases referred to in his testimony as having been granted on competitive bidding in Reserve No. 2, were read into the record, it being stipulated by counsel that it was unnecessary to read the formal leases in full. The matter was read by counsel for plaintiff pursuant to this stipulation as follows:

Per Cent.

For all oil produced of 30° Baume or over:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month16-2/3

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month20

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On that portion of the acreage production per well of more than 100 barrels per day for the calendar month61

(2) For all oil produced of less than 30° Baume:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month14-2/7

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month16-2/3

And from the lease to Louis Titus dated the 3d of June, 1922, Lease 010177:

(1) For all oil produced of 30° Baume or over:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 bar-

rels per day for the calendar
month16- $\frac{2}{3}$
[240—161]

On that portion of the average pro-
duction per well of more than 50
barrels per day and not more than
100 barrels per day for the cal-
endar month20

On that portion of the average pro-
duction per well of more than 100
barrels per day for the calendar
month69

(2) For all oil produced of less than 30°
Baume:

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month12- $\frac{1}{2}$

On that portion of the average pro-
duction per well of more than 20
barrels and not more than 50 bar-
rels per day for the calendar
month14- $\frac{2}{7}$

On that portion of the average pro-
duction per well of more than 50
barrels and not more than 100 bar-
rels per day for the calendar
month16- $\frac{2}{3}$

On that portion of the average pro-
duction per well of more than 100
barrels per day for the calendar
month64

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And a lease dated the 3d of June, 1922, to Louis Titus, No. Visalia 010178:

- (1) For all oil produced of 30° Baume or over:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month16-2/3

On that portion of the average production per well of more than 50 barrels per day and not more than 100 barrels per day for the calendar month20

On that portion of the average production per well of more than 100 barrels per day for the calendar month71

- (2) For all oil produced of less than 30° Baume:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 bar-

rels per day for the calendar
month14-2/7
[241—162]

On that portion of the average pro-
duction per well of more than 50
barrels and not more than 100 bar-
rels per day for the calendar
month16-2/3

On that portion of the average pro-
duction per well of more than 100
barrels per day for the calendar
month66

A lease of the same date to Louis Titus, numbered
Visalia 010179:

(1) For all oil produced of 30° Baume or
over:

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month12-1/2

On that portion of the average pro-
duction per well of more than 20
barrels and not more than 50 bar-
rels per day for the calendar
month16-2/3

On that portion of the average pro-
duction per well of more than 50
barrels per day and not more than
100 barrels per day for the cal-
endar month20

On that portion of the average pro-
duction per well of more than 100

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barrels per day for the calendar
month77

- (2) For all oil produced of less than 30°
Baume:

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month12-1/2

On that portion of the average pro-
duction per well of more than 20
barrels and not more than 50 bar-
rels per day for the calendar
month14-2/7

On that portion of the average pro-
duction per well of more than 50
barrels and not more than 100 bar-
rels per day for the calendar
month16-2/3

On that portion of the average pro-
duction per well of more than 100
barrels per day for the calendar
month72

A lease of the same date to Louis Titus, numbered
Visalia 010180:

- (1) For all oil produced of 30° Baume or
over:

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month12-1/2

[242—163]

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month16- $\frac{2}{3}$

On that portion of the average production per well of more than 50 barrels per day and not more than 100 barrels per day for the calendar month20

On that portion of the average production per well of more than 100 barrels per day for the calendar month74

(2) For all oil produced of less than 30° Baume:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12- $\frac{1}{2}$

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month14- $\frac{2}{7}$

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month16- $\frac{2}{3}$

On that portion of the average production per well of more than 100

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barrels per day for the calendar
month69

The lease of the 24th of July, 1922, to the Equitable Petroleum Corporation, numbered Visalia 010181:

(1) For all oil produced of 30° Baume or
over:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month12-1/2

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month16-2/3

On that portion of the average production per well of more than 50 barrels per day and not more than 100 barrels per day for the calendar month20

On that portion of the average production per well of more than 100 barrels and not more than 500 barrels per day for the calendar month25

On that portion of the average production per well of more than 500 barrels per day for the calendar month35

- (2) For all oil produced of less than 30°
Baume: [243—164]

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month12-1/2

On that portion of the average pro-
duction per well of more than 20
barrels and not more than 50
barrels per day for the calendar
month14-2/7

On that portion of the average pro-
duction per well of more than 50
barrels and not more than 100
barrels per day for the calendar
month16-2/3

On that portion of the average pro-
duction per well of more than 100
barrels and not more than 500 bar-
rels per day for the calendar
month20

On that portion of the average pro-
duction per well of more than 500
barrels per day for the calendar
month35

On lease dated November 29, 1923, numbered N.
R. 22:

- (1) For all oil produced of 30° Baume or over:

On that portion of the average pro-
duction per well not exceeding 20

barrels per day for the calendar month	121½
On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month	16-2/3
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	20
On that portion of the average production per well of more than 100 barrels per day for the calendar month	56
(2) For all oil produced of less than 30° Baume:	
On that portion of the average production per well not exceeding 20 barrels per day for the calendar month	121½
On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month	14-2/7
On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month	162/3

On that portion of the average production per well of more than 100 barrels and not more than 250 barrels per day for the calendar month47½
[244—165]

On that portion of the average production per well of more than 250 barrels per day for the calendar month56

And on lease numbered N. R. 23, entered into December 12, 1923, with A. H. Heller:

(1) For all oil produced of 30° Baume or over:

On that portion of the average production per well not exceeding 20 barrels per day for the calendar month25

On that portion of the average production per well of more than 20 barrels and not more than 50 barrels per day for the calendar month33⅓

On that portion of the average production per well of more than 50 barrels and not more than 100 barrels per day for the calendar month40

On that portion of the average production per well of more than 100 barrels per day for the calendar month50

(Testimony of E. C. Finney.)

(2) For all oil produced of less than 30°
Baume:

On that portion of the average pro-
duction per well not exceeding 20
barrels per day for the calendar
month25

On that portion of the average pro-
duction per well of more than 20
barrels and not more than 50 bar-
rels per day for the calendar
month28-4/7

On that portion of the average pro-
duction per well of more than 50
barrels and not more than 100 bar-
rels per day for the calendar month 33½

On that portion of the average pro-
duction per well of more than 100
barrels per day for the calendar
month40

[245—166]

Cross-examination.

On cross-examination the witness Finney testi-
fied that he entered the service of the Interior
Department September 1, 1894, from the State of
Kansas, having previous to that time studied law
and been admitted to the bar of his State; during
the time intervening between 1894 and March 18,
1921, he was continuously in the service of the
United States, attached to the Interior Depart-
ment, and his duties required him to familiarize
himself with, and indeed to make a specialty of

(Testimony of E. C. Finney.)

the study and the administration of, the land laws of the United States, including the mining laws, the homestead laws, the laws pertaining to the Reclamation Service, and indeed all of those laws which had to be administered by that department; all the period from 1894 to March 18, 1921, the positions held by him were classified Civil Service positions; in 1910 and part of 1911 he was the chief law officer of the Reclamation Service of the Government; at the time he was appointed Assistant Secretary of the Interior he was a member of the Board of Appeals of that Department, which Board consisted of himself and two other members, all three of them lawyers, and the functions of that Board were to hear appeals involving law and facts and to make recommendations in the cases coming before it to the Secretary of the Interior, and also to perform such other duties as might be assigned to it by the Secretary. During his period of service in the Department from 1894 to 1921, prior to his own appointment, no man was ever appointed First Assistant Secretary of the Interior by promotion from within the Department; in all previous administrations the Secretary of the Interior and the First Assistant Secretary were appointed from outside, the appointments being known as political appointments. Before Mr. Finney was appointed First Assistant Secretary he had only come in contact twice with Albert B. Fall when the latter was Senator; the first time the witness was appearing before the Committee on Public Lands, of which Mr. Fall was

(Testimony of E. C. Finney.)

a member, and was introduced to him; the second time witness saw Senator Fall was when Mr. Franklin K. Lane was Secretary of the Interior and requested witness to see Senator Fall regarding an amendment to a pending homestead bill. Mr. Finney did not see Mr. Fall again until after he was appointed Secretary of the Interior. Witness was appointed First Assistant Secretary by President Harding and his appointment was confirmed by the Senate; he does not know exactly whether that appointment was made on recommendation of Secretary Fall to the President; of course, it was necessarily agreeable to [246—167-168] Mr. Fall but he does not know whether he made the original recommendations; he does know that the Secretaries are consulted always about their assistants. Mr. Finney at the time he testifies is still First Assistant Secretary of the Interior.

Prior to the time the witness became First Assistant Secretary his only acquaintance with Mr. Doheny was a casual meeting with him when he appeared as a witness before a Senate committee in 1917 and he saw Mr. Doheny a few moments in the Department while Mr. Lane was Secretary of the Interior, at which time he and Mr. Doheny merely greeted each other and shook hands. Before he became First Assistant Secretary he had transacted no business whatever with Mr. Doheny nor had he ever communicated with him, or seen him, except upon the two occasions above men-

(Testimony of E. C. Finney.)

tioned. During the period he has been First Assistant Secretary he has never seen Mr. Doheny.

Referring to his testimony on direct examination that upon an occasion the exact date of which he cannot fix, but between March 4 and May 11, 1921, Secretary Fall inquired of him with respect to some claims that were pending in the Department in connection with lands in the petroleum reserves; the Secretary mentioned at that time particularly the Honolulu Consolidated oil claim, the witness thinks possibly also the Midway, and some other claims, and the witness took to him the departmental files which had in them correspondence relating to any claims which had been asserted in those reserves, together with the map of the two reserves, so that the Secretary got a general idea of the situation. When Mr. Fall first became Secretary of the Interior the witness also certainly gave him information as to other matters; he always does that with a new Secretary; the information that he gave to Mr. Fall during his early days as Secretary, in acquainting him with the status of matters pending in the Department, was not confined to oil reserves by any means.

Within a month, or thereabouts, after Mr. Fall became Secretary of the Interior there was brought to his attention, by being sent over to him from the White House, a claim of the United Midway Oil Land Company on lands in Naval Reserve No. 1; also there appeared there in the Depart-

(Testimony of E. C. Finney.)

ment a Mr. McMurray, a lawyer from Oklahoma, representing that claimant, but Mr. Finney does not remember the exact date though it was prior to April 7, 1921, on which date the witness wrote to Secretary Fall the following memorandum, which was received in [247—169] evidence as Defendants' Exhibit "G":

DEFENDANTS' EXHIBIT "G."

"April 7, 1921.

Dear Mr. Secretary: Referring to case in Naval Reserve No. 1, California, called to your attention by Mr. McMurray, I have to advise as follows:

The United Midway Oil Company, which he represents, had claims in sections 1 and 12, at the extreme east end of said naval reserve. It drilled a well on section 12 at a cost of about \$100,000, but failed to get oil. There were other expenditures in the way of derricks, etc. All the work was done prior to 1910-11. The land has been withdrawn ever since that time. The company applied for a promise under section 18a of the leasing act, asking that it be given a patent or a lease to approximately 480 acres in section 1. This was denied by Secretary Payne, the Secretary of the Navy concurring.

Mr. McMurray has talked the matter over with me, pointed out the equities of his client, also pointed out that this section 1 adjoins on the south, section 36 owned by the Standard Oil Com-

pany, from which 40,000 barrels of oil per day are being produced, and that evidently a considerable part of this oil is coming from under section 1. Should it be determined that his client has equities which should be taken care of, three courses are possible:

(1) To submit to the President an offer of compromise, which would involve giving a lease to the company for a part or all of the land in section 1.

(2) Eliminate said section from the naval reserve.

(3) Under the authority of a clause in the naval appropriation act, copy attached, the Secretary of the Navy might permit the company to put down wells on the said section 1, as an offset to the wells on the Standard Oil section, upon such royalties as might be agreed upon.

If its lands had been outside of the naval reserve, this company would have been entitled, under section 19 of the act, to a prospecting permit for the same and a lease thereafter if it found oil. Being within a naval reserve, section 19 is not applicable. I am inclined to think that its equities might be recognized to the extent of authorizing it to drill a limited number of wells along the north line of section 1, on payment of the royalties fixed in the regulations. Our justification would be that it was an offset to drainage by the Standard. I think the Secretary of the

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(Testimony of E. C. Finney.)

Navy should be consulted, however, before any commitment is made.

Respectfully,

(Signed) FINNEY,
First Assistant Secretary."

The Section 19 mentioned in the foregoing memorandum refers to that section of the Leasing Act of February 25, 1920.

Thereupon the witness identified as having been received at the office of the Secretary of the Interior, addressed to Honorable A. B. Fall, the following letter, which as Defendants' Exhibit "H" was received:

DEFENDANTS' EXHIBIT "H."

"THE WHITE HOUSE,

Washington, April 20, 1921. [248—170]

My dear Mr. Secretary: I am sending you herewith a letter which the President has received from Mr. R. W. Dick, of the United Midway Oil Land Company, concerning this company's claim to certain oil lands in Kern County, California. I also enclose the papers on our files regarding this claim. With the return of the correspondence, will you not be good enough to let the President have a report, as well as your advice, on the matter?

Sincerely yours,

GEO. B. CHRISTIAN, Jr.,
"Secretary to the President." [249—171]

(Testimony of E. C. Finney.)

As regards how the papers referred to got to the White House, witness presumes the claimants, possibly having in mind Section 18a or Section 18 of the Leasing Act of February 25, 1920, which provided for certain action by the President, carried the matter there by letter or otherwise, in an attempted appeal by the claimants to the President of the United States, that it had not been acted on during the Wilson Administration and was a left-over when President Harding assumed office; this correspondence had been called to the attention of the Secretary of the Interior by Mr. McMurray and to the attention of the President by Mr. R. W. Dick, the witness does not recall the latter; while the United Midway claim was before the Secretary of the Interior in April, 1921, and at the time Mr. Finney wrote his memorandum to Secretary Fall, he did not have knowledge of what the Navy Department was doing with reference to arranging to lease a part of Section 1, but he learned of that later.

In May, 1921, to the best of Mr. Finney's recollection prior to the 11th of that month, Secretary Fall told him that there was under consideration a proposed plan for a transfer of the administration of the naval reserves to the Interior Department, and, just as in the case of the Midway, the Secretary asked the witness for information on the subject of the state of the law respecting oil lands of the United States both within and without the naval reserves, and he prepared a memo-

(Testimony of E. C. Finney.)

random discussing the two laws, the general Leasing Act of February 25, 1920, and the Naval Reserve Act of June 4, 1920, which memorandum is Plaintiff's Exhibit 52. The views expressed in that memorandum with regard to the state of the law and policy were Judge Finney's views; after that memorandum was prepared the letter of May 11, 1921 (Plaintiff's Exhibit 53), was prepared in the Interior Department, signed by Secretary Fall and handed in to Secretary Denby, and the initials "ECF" on the retained copy of that letter are in the handwriting of the witness and indicate that he either wrote or passed upon the letter; that is the custom⁴ of the Interior Department, for the officer, not signing the letter, who either prepared it or passed upon it before it goes to the officer who is to sign it, to indicate for the signing officer, by initials, his approval of that letter which bears the initials. Memorandum referred to in the last-mentioned May 11th letter is probably Exhibit [250—172] 52; he does not recall whether the "tentative form of letter for your signature if it meets with your approval" in the letter of May 11, 1922, Exhibit 53, is a draft of a letter for the Secretary of the Navy to use in transmitting the draft of the Executive Order to the President; he may have seen it at the time, or possibly it was attached to the letter as an exhibit, but he does not now recall it; the same is true with reference to "a form of Executive Order for the President's signature if it meets with your sugges-

(Testimony of E. C. Finney.)

tion of yesterday" mentioned in that letter. The officials of the Interior Department frequently draft Executive Orders for the President's signature in connection with public lands and such matters, and it is the usual practice in that Department when a proposed Executive Order is drafted for the official who prepared it to prepare at the same time a letter of transmittal addressed to the President.

At this point counsel for the plaintiff at the request of counsel for defendants produced, and the latter offered in evidence as Defendants' Exhibit "I," the draft of letter sent to the Secretary of the Navy by the Secretary of the Interior under cover of the latter's letter of May 11, 1921 (Exhibit 53), and therein referred to, which said Exhibit "I" reads as follows: [251—173]

DEFENDANTS' EXHIBIT "I."

"My dear Mr. President:

The Act of February 25, 1920 (41 Stat., 437), authorizes the Secretary of the Interior to lease producing wells in naval petroleum reserves, and authorizes the President to permit the drilling of additional wells or to lease the remainder or any part of any claim in such reserves, with preference right to the claimant or his successor. A clause in the appropriation act for the year ending June 30, 1921 (41 Stat., 812), authorizes the Secretary of the Navy to take possession of unappropriated lands within naval reserves, and to conserve, develop,

(Testimony of E. C. Finney.)

use, and operate the same "directly or by contract, lease, or otherwise."

To avoid conflict, delay, and duplication, it occurs to me that the matter may be best administered through one agency, and I have to suggest that the Secretary of the Interior be directed, under your supervision, to administer all of the various provisions of law cited relating to naval petroleum reserves heretofore created by Executive order, the oil and gas accruing to the United States from the operation of any wells in said reserves to be utilized by or for the Navy, in accordance with the provisions of existing law.

Under the authority vested in me by said appropriation act, I request and recommend that you take the necessary steps to impose this duty upon the Secretary of the Interior. The details incident to this transfer of authority and to the disposition of the oil and gas produced will be arranged co-operatively between the Interior Department and this Department.

Sincerely,

_____,
Secretary.

The President,
The White House."

The foregoing exhibit was undated and it was stipulated between counsel for the parties that the letter was never sent by the Secretary of the Navy to the President; that the draft of the Executive Order, as finally agreed upon by the two depart-

(Testimony of E. C. Finney.)

ments, was taken by Colonel Theodore Roosevelt, Assistant Secretary of the Navy, to President Harding and was not sent by letter.

The witness thereupon identified typewritten draft of the proposed Executive Order as made in the Interior Department upon which there appeared some interlineations in pencil and the same, without said interlineations as regards which counsel for the defendants stated there would be testimony hereafter, was thereupon received in evidence as Defendants' Exhibit "J" and reads as follows:

DEFENDANTS' EXHIBIT "J."

"EXECUTIVE ORDER.

Under the provisions of the act of Congress approved February 25, 1920 (41 Stat., 437), authorizing the Secretary of the Interior to lease producing oil wells within any naval petroleum reserve; authorizing the President to permit the drilling of additional wells or to lease the remainder or any [252—174] part of a claim upon which such wells have been drilled, and under authority of the act of Congress approved June 4, 1920 (41 Stat., 812), authorizing the Secretary of the Navy to conserve, develop, use, and operate, directly or by contract, lease, or otherwise, unappropriated lands in naval reserves; the conservation, development, use, and operation of oil and gas-bearing lands in naval reserves Nos. 1 and 2, California, naval reserve No. 3, Wyoming, and naval oil shale reserves in Colorado and Utah, is hereby committed to the Secretary

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5
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(Testimony of E. C. Finney.)

of the Interior, under supervision of the President, and he is authorized and directed to perform any and all acts necessary for the protection, administration, and development of the resources of said reserves, subject to the conditions and limitations of existing laws or such laws as may be hereafter enacted by Congress pertaining thereto.

The White House,

May —, 1921." [253—175]

The witness repeated his testimony as given on the direct to the effect that after promulgation of the Executive Order of May 31, 1921, and under cover of letter, dated June 2, 1921 (Exhibit 54), there were transmitted to the Interior from the Navy bids which had been received but not opened for a lease of land in Section 1 of Reserve 1 and testified that said bids were opened in his office in Washington June 8, 1921, and a minute of the proceedings made, which minute he identified and which as Defendants' Exhibit "K" was read in evidence and is as follows: [254—176]

DEFENDANTS' EXHIBIT "K."

"DEPARTMENT OF THE INTERIOR,

Office of the Secretary.

Washington, D. C., June 8, 1921.

At 10 A. M. June 8, 1921, the first Assistant Secretary of the Interior, Hon. E. C. Finney, proceeded, after three days' public notice, to open bids at his office for the lease for oil producing purposes of a

certain strip of land within Naval Petroleum Reserve No. 1 in Kern County, California; these bids having been received by the Bureau of Engineering, Navy Department, on April 25, 1921, at its offices in Washington, D. C., and at Room 217 Post Office Building, San Francisco, California, in response to public advertisement; the opening of the bids having been postponed by order of the Secretary of the Navy; and the President having subsequently by Executive Order of May 31, 1921, transferred to the Secretary of the Interior the administration of this and other Naval Petroleum Reserves, in accordance with provisions of acts of Congress of February 25, 1920 (41 Stat., 437) and June 4, 1920 (41 Stat. 912).

The following persons were present when the bids were opened:

Hon. E. C. Finney, Assistant Secretary of the Interior.

Commander Stewart, representing the Secretary of the Navy.

J. H. Rosseter, representing Roy N. Bishop.

O. N. Beller, representing Charles J. Wrightsman.

J. F. McMurray, representing the United Midway Oil Co.

C. F. Whittier, President, United Midway Oil Co., who came in during the proceedings.

Thomas A. O'Donnell.

A. D. Fyfe.

James A. Garfield.

Mr. Smith, of the Associated Press, who came in during the proceedings.

Harry S. Garner, who kept record for the Interior Department.

W. C. Mendenhall, U. S. Geo. Survey.

Secretary Finney first read the advertisement of the Navy Department inviting bids, as follows:

Sealed proposals will be received until noon April 25, 1921, at Room 217, Post Office Building, San Francisco, Calif., or at Bureau of Engineering, Navy Department, Washington, D. C., for a lease of a strip of land within Petroleum Naval Reserve No. One, Kern County, California, along the north side of Section 1-31-24, M. D. M. and along the east side of the northeast quarter of said section nine hundred feet wide, and to have drilled thereon twenty-two wells in two rows, properly and economically spaced, as rapidly as men, material and supplies therefor can be obtained.

Bidders must furnish evidence of their ability to begin promptly and prosecute diligently the work of drilling and producing. Bids must state when work will be started and the time for drilling the first and each succeeding well; the royalty that will be paid in crude oil delivered on the lease or the equivalent in fuel oil delivered at tidewater at the option of the Navy Department. [255—177]

Each proposal must be accompanied by a bond or a certified check in the sum of \$10,000 as a guarantee that the bidder will if his pro-

posals is accepted enter into contract and furnish satisfactory bond of ——— (State amount) ——— for the fulfillment thereof.

The right is reserved to reject any or all bids or to accept any bid, as the interests of the Government may require.

(Signed) EDWIN DENBY,
Secretary of the Navy.

Secretary Finney: We have a letter of June 22d from the Secretary of the Navy transmitting the sealed bids to this Department after the order of the President of May 31, 1921, which transferred the administration of reserves to this Department to be handled in co-operation with the Secretary or Acting Secretary of the Navy as follows:

NAVY DEPARTMENT,
Washington.

2 June, 1921.

My dear Mr. Secretary:

In view of the fact that the President has signed the executive order committing the Naval Petroleum Reserves to the Secretary of the Interior, with certain reservations, there are forwarded herewith a number of bids which were submitted to the Navy Department in connection with a proposal to drill twenty-two wells on Section 1-31-24, Naval Reserve No. 1. As you doubtless know the opening of these bids was held up pending the issuance of the executive order above referred to.

Inasmuch as action on these bids has been delayed for a considerable time it is presumed that

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the Department of the Interior will take immediate action thereon in order not only to protect the Government's interests in the matter, but also to release the \$10,000.00 checks of the unsuccessful bidders on this land.

The list of bids follows:

Roy N. Bishop.

Union Oil Company of California.

Pacific Oil Company.

Standard Oil Company of California.

Oil Operators Syndicate.

Coalinga Mohawk Oil Co.

Thos. A. O'Donnell.

Miocene Oil Company.

Spaulding Gas and Petroleum Company.

United Oil Company.

Chas. J. Wrightsman, Proposal No. 2.

Pan-American Petroleum and Transport Co.

While these bids have not been opened officially it should be noted that some of them were opened through inadvertence. A telegram was sent to Lieutenant Commander Landis, the Officer-in-Charge of Naval Petroleum Reserves in San Francisco, not to open bids, but through a delay on the part of the Postal Telegraph Company in sending the message some of the bids were opened. However, the contents of the bids were not divulged. [256—178]

Bids from the following were also received but were withdrawn later by request:

Louis Titus.

Charles J. Wrightsman, Proposal No. 1.

R. H. Anderson.

Before final action is taken on these bids it is requested that consultation thereon be had with the Secretary of the Navy as set out in the executive order referred to.

There is also enclosed herewith a copy of the proposal inviting bids for the lease of the afore-said lands.

Sincerely yours,

(Signed) CHAS. B. McVAY, Jr.,

Acting Secretary of the Navy.

Honorable Albert B. Fall,

Secretary of the Interior,

Washington, D. C.

On the 3d of June I received a letter from the Secretary of the Navy as follows:

NAVY DEPARTMENT,

Washington.

3 June, 1921.

My dear Secretary:

There is forwarded herewith a copy of a telegram from the Miocene Oil Company requesting the withdrawal of their bid for proposed lease on certain land in Section 1-31-24, Naval Petroleum Reserve No. 1. In view of the fact that three other bidders have already been permitted to withdraw their bids and to have their checks returned, it would seem only fair to allow the Miocene Oil Company the same privilege.

Yours sincerely,

(Signed) EDWIN DENBY.

Honorable Albert B. Fall,

Secretary of the Interior,

Washington, D. C.

So that out of the bids originally submitted four have already been withdrawn.

(At this point Mr. Thomas A. O'Donnell requested to be allowed to withdraw his bid, and made the following statement:

Mr. O'DONNELL.—I wish to state that I had spoken to the Secretary of the Navy personally about the privilege of withdrawing it, and neglected to put it in writing or in a telegram, my reason being that the delay has already been considerable and that I have had other matters taking up my time and attention, and on account of the uncertainty as to when definite action can be secured. [257—179]

Secretary FINNEY.—If you will put your withdrawal in writing and file it with the Department, the withdrawal will be granted in view of the fact that four other bidders have been allowed to withdraw their bids.

(Mr. O'Donnell then left the room for the purpose of preparing his application.)

Secretary FINNEY.—There is pending before the Department the application of the United Midway Oil Co., for a lease under the relief provisions of the oil and gas leasing act of February 25, 1920, claiming portions of Sections 1 and 12 under mineral locations alleged to have been made prior to withdrawal. The claim of this company has not been finally disposed of.

(The proceedings were halted at this point awaiting the arrival of Commander Stewart of the Navy Department. In the meantime Mr. O'Donnell pre-

pared and presented his written request for permission to withdraw his bid.)

Secretary FINNEY.—Mr. O'Donnell having filed a written request to be permitted to withdraw his bid, it is directed that in view of the fact that four other bidders have already been permitted to withdraw their bids and have their checks returned, the same privilege will be accorded to Mr. O'Donnell.

(At this point Commander Stewart *of the* entered the room and Secretary Finney briefly informed him as to proceedings already taken.)

Secretary Finney then proceeded to open the bids in the order in which they were listed in the letter from the Secretary of the Navy, reading aloud the contents of each bid. The following is the list of bids:

(A) Roy N. Bishop, Crocker Building, San Francisco, Cal. Bid accompanied by a certified check for \$10,000.

(B) Union Oil Co. of California, 1110 Union Oil Building, Los Angeles, Cal.

Secretary FINNEY.—(After reading bid of the Union Oil Co.) I find no check with this proposal, but find a bond for \$10,000 of the Hartford Accident & Indemnity Co.

(C) Pacific Oil Co. of California, San Francisco, Cal. Bid accompanied by a certified check for \$10,000.

(D) Standard Oil Co. of California, San Francisco, Cal. *Check* accompanied by a certified check for \$10,000.

(E) Oil Operators Syndicate, by J. P. O'Brien, 347 Mills Building, San Francisco, Cal.

Secretary FINNEY.—(After reading bid of the Oil Operators Syndicate): I find no check, but I find a bond for \$10,000.

(F) Coalinga Mohawk Oil Co., 403 American National Bank Building, San Francisco, Cal. Accompanied by a certified check for \$10,000. [258—180]

(G) Spaulding Gas & Petroleum Co., Taft, Cal. Accompanied by a draft on New York for \$10,000.

(H) United Oil Co., Los Angeles, Cal. Accompanied by a certified check for \$10,000.

Secretary Finney also read a copy of a letter of April 20th from the General Petroleum Corporation addressed to the United Oil Co., and submitted by them with their bid, agreeing to store and transport oil under certain conditions in case the United Oil Co. should be awarded the lease.

(I) Wrightsman Oil Co., 120 Broadway, New York City. By C. J. Wrightsman, President, Proposal No. 2. Accompanied by a certified check for \$10,000.

(J) Pan-American Petroleum Co., 120 Broadway, New York City. Accompanied by a bond for \$10,000 of the Fidelity & Deposit Co. of Maryland.

Mr. Finney also read a letter from Mr. Doheny which accompanied the bid.

The bids proposed various percentages of payment depending upon quality of oil, amount of production, and other specified conditions, and cannot

(Testimony of E. C. Finney.)

be readily displayed in tabular form for comparison.

After completing the opening of the bids Secretary Finney explained again for the information of those who had not been present during the entire proceeding that five bids had been withdrawn, and named those listed. He then said:

'These bids have all been noted and lettered in the order in which they were listed by the Navy Department, and the matter will be taken under consideration by Secretary Fall in cooperation with and after consultation with, the Secretary of the Navy. Secretary Fall had a hearing of coal operators this morning else he would have been present personally. He accordingly asked me to open the bids in the presence of such gentlemen as wished to be here, and to tell you that he would take the matter under immediate consideration.'

(Whereupon at 11:55 A. M. the proceedings closed.)" [259—181]

The proceedings set forth in the foregoing exhibit were had as therein narrated and thereupon the witness, prior to leaving Washington, as he did a few days thereafter, sent a copy of those proceedings, together with abstract of the bids, to Secretary Fall with the following memorandum (Defendants' Exhibit "K-a"):

(Testimony of E. C. Finney.)

DEFENDANTS' EXHIBIT "K-a."

June 10, 1921.

Dear Mr. Secretary:

Herewith is abstract of bids on Section 1, Naval Reserve No. 1, California, prepared by Mr. Mendenhall, of Geological Survey.

I also attach a copy of memorandum of the proceedings had when I opened the bids.

The bids themselves and copy of the Navy's proposal are in the hands of Mr. Mendenhall, and it may be that when you look over the bids you will wish to confer with Mendenhall and have him explain the details of some of them.

FINNEY."

Mr. Finney was absent from Washington about thirty days and when he returned he learned from Secretary Fall that action had been taken both on the bids referred to in the foregoing and on the United Midway claim to Section 1 and Section 12 which had been the subject of his April 7, 1921, memorandum. Thereupon there was offered in evidence as Defendants' Exhibit "L" the following communication dated July 8, 1921:

DEFENDANTS' EXHIBIT "L."

"My dear Mr. President:

On April 20th, through your Secretary, you forwarded to me papers in the case of the application of the United Midway Oil Land Company who were asking adjustment, through yourself, of their claim to oil lands within naval reserve No. 1, situated in Section 1 and 12 and approximating 1271.91 acres.

On June 1st, I wrote you that I was not as yet ready to report as I was awaiting bids which had been advertised for by the Navy Department upon a portion of this same land, but that I thought the parties had some character of equity which might entitle them to a drilling permit upon equal terms with any one else who might bid under the Navy offer.

Immediately upon receipt of your letter of April 20th, I notified Secretary Denby and as the advertisement for bids by the Navy was then in course of publication, the latter Department, disregarding entirely any claim of the Midway Company suggested that a telegram be sent directing the discontinuance of the publication for bids for ten days, allowing me time in which to consider the Midway claim.

This the Navy saw fit not to do but continued the advertisement and received various bids based upon the drilling of twenty-two wells in the strip nine hundred feet wide across the Northern and a portion of the Eastern boundary of the lands in dispute.

You directed me to proceed to handle the Naval Reserve lands for the Navy and these bids were finally turned over to me after my letter to you of June 1st.

I immediately referred the bids to our experts to ascertain which was the best bid. This was both for the purpose of allotting the bid and of having information to guide me in the adjudication of the Midway claim if I should conclude [260—182] that they had an equity entitling them to any relief at your hands.

My experts reported that the bid of the Pan American Company, known as the 'Doheny' bid, was the best, either at 50% royalty should the wells be completed within six months; or 55 1/2% royalty, the wells to be completed within eight months, or 57 1/2% royalty, the wells to be completed within a twelve months period.

Admiral Griffin of the Navy, called into consultation, seemed to agree that the 'Doheny' bid was the best and to prefer the 50% bid.

I notified Mr. Doheny that his bid for twenty-two wells on a 50% royalty, wells to be completed within six months, was accepted.

Commander Stewart later came into my office, accompanied by Admiral Griffin, and announced that the Navy preferred the twelve months drilling of the twenty-two wells at 57 1/2%.

I notified both officers that I thought it my duty to recommend to you the granting of a drilling permit upon similar terms and upon the same acreage just South of the strip advertised by the Navy Department, and bid in by 'Doheny,' is the Midway Company, in settlement of their claims for some character of oil equity upon 1271.91 acres in Sections 1 and 12 of the Naval Reserve.

These gentlemen strenuously objected to any drilling permit being granted the Midway people within the Reserve, but insisted that I should allow them in exchange for any rights which they might have, some land entirely outside the boundaries of the Reserve.

Oil lands outside the Reserve to which there is no

private claim or lease by the Secretary of the Interior, a portion of the proceeds going to the Reclamation fund and a portion to the State in which the lands are located.

Thus my position is that of a Trustee for the Reclamation fund and for the State in the one instance, and a Trustee for the Navy for the public lands upon which there is no private claim within the Naval Reserve.

Holding the view which I did hold, as the Midway Company having some equity, but being desirous of adjudicating the matter, if possible, to the end that the Navy might have no possible objection. I called upon Colonel Doheny, head of the Pan American Company, by telegram, stating the facts to him and that he was entitled to his lease and would have it executed under one of his bids, but asking if it were possible for him to assist me in an adjustment of the Midway claims, by agreeing to surrender eight wells out of the twenty-two which were advertised by the Navy and allotted to him under his bid; he retaining the lease upon the other fourteen.

I thought that I was imposing upon Mr. Doheny and even at the insistence of the Navy officials was not justified in doing so except through a personal appeal based upon our long-time acquaintance and my knowledge of his patriotism and sense of justice.

I received an immediate favorable response and I have had the leases drawn to himself of the fourteen wells, and to the Midway Company for eight wells which he surrenders.

These leases, therefore, will be executed to the two parties if you approve the Midway settlement,

rather than to one, the Pan American (Doheny), upon exactly the terms of the Doheny bid which the Navy admits to be the best and upon identically the same land and under the same conditions that the Navy advertised, that is, all drilling will be confined to the 900' strip offered by them and described in their advertisement.

I am herewith enclosing you full report on the Midway case with my conclusions and recommendations in the premises to you.

If you approve I will sign the leases to-day and the matter will thus be settled, I hope to the satisfaction of everyone concerned.

The Midway people have quitclaimed to the United States all land upon which they had theretofore asserted any claim, that is to any, a total acreage of 1271.91 acres, and through this lease proposed they will be entitled to the occupation of fifty-two plus acres upon which to drill eight wells to be completed within eight months and upon which they are to pay a royalty of $55\frac{1}{2}\%$ of all oil extracted and to pay for the Navy's proportion of all gas produced.

Very sincerely yours,

(Signed) ALBERT B. FALL.

Hon. Warren G. Harding,

The President,

White House." [261—183]

Thereupon as Defendant's Exhibit "M" there was offered and received in evidence letter dated July 8, 1921, from the Secretary of the Interior to the President of the United States which, omitting

details of the claim therein referred to and description of the lands claimed, reads as follows:

DEFENDANTS' EXHIBIT "M."

"My dear Mr. President:

Referring to the letters of your Secretary, Mr. Christian, of April 20 and June 10, and to my report of June 1 concerning the application of the United Midway Oil Land Co. for compromise under section 18a of the mineral leasing act of February 25, 1920 (41 Stat. 437), involving certain land in naval reserve No. 1, I have the honor to submit, in compliance with your direction, the following report and recommendation: * * *

On February 26, 1921, the applicant filed with the President its petition, requesting him to direct a compromise and settlement of its claim. The President called upon Secretary Payne for a report in response to which a copy of the Secretary's ruling of February 24, above referred to, was transmitted to the White House. No further action was taken by President Wilson, and on April 20, 1921, the matter was forwarded by the White House to the department for report and advice. On June 1, 1921, a preliminary report was submitted to you. Under date of June 10, 1921, you advised me that you would be glad to act in the matter when I should send you my final recommendation. An examination of the record discloses the following facts:

1. The application for compromise under section 18a was filed prior to the expiration of 12 months from the date of the approval of the leasing act..

* * *

(Testimony of E. C. Finney.)

RECOMMENDATION.

In view of the equities apparent in this case I am of the opinion that this application is entitled to some relief. Mr. Doheny, whose bid to drill the offset wells on the land covered by these claims, referred to in the foregoing report, I had concluded to accept, has offered to waive his claim under his bid to the west 2,550 feet, of the 900-foot strip along the north line of said section 1, to the end that the United Midway Oil Land Co. may receive a lease therefor in settlement of its claims. The company agrees to this proposition. I therefore respectfully recommend that you authorize and direct a compromise of these claims and the issuance of a lease to the United Midway Oil Land Co. of the west 2,550 feet of the 900-foot strip above referred to with the privilege of drilling thereon eight wells to commercial production under the terms and conditions set out in the accompanying copy of lease.

Sincerely,

ALBERT B. FALL.

The President,

The White House.

THE WHITE HOUSE,

July 8, 1921.

Approved:

WARREN G. HARDING. [262—184]

Upon the return of the witness from his trip west, which began about June 15, 1921, Secretary

(Testimony of E. C. Finney.)

Fall told him the substance of what had been done, as shown by the foregoing exhibits, and later he saw copies thereof in the files.

Explaining the use of the term "Acting Secretary" to exhibits signed by him and heretofore put in evidence, as well as any appearing in the evidence hereafter, Judge Finney stated that the law with respect to the position which he holds provides that the First Assistant Secretary of the Interior shall become Acting Secretary of the Department during the absence of the Secretary, so that automatically whenever the Secretary was absent he became Acting Secretary and in the absence of the Secretary the Acting Secretary legally has all the powers in connection with the administration of the Department that the Secretary has under the law.

The witness thereupon identified letter dated July 30, 1921, bearing his signature as Acting Secretary, and addressed to the Secretary of the Navy, as a letter prepared in the Bureau of Mines for his signature, and he also identified letter from the Acting Secretary of the Navy to the Secretary of the Interior dated August 15, 1921, as a reply to the July 30th letter, and these two communications were thereupon read in evidence as Defendants' Exhibits "N" and "O," respectively, and are as follows: [263—185]

DEFENDANTS' EXHIBIT "N."

"July 30, 1925.

The Honorable,

The Secretary of the Navy.

Dear Mr. Secretary: The executive order of May 31, 1921, committed to the Secretary of the Interior the performance of any and all acts for the protection, conservation and administration of oil and gas produced on the Naval Petroleum Reserves. Under the leasing act of February 25, 1920, this Department is authorized to perform similar duties on oil and gas produced on the public domain. In connection with this act the supervision of drilling, the production and gauging of oil, the metering of gas, and the computation of royalty money have been delegated to the Bureau of Mines.

At the time the Bureau of Mines prepared its estimate for funds to carry on this work, it was not realized that the Bureau would be called upon to supervise the production and drilling on the Naval Reserves, and no funds were requested for this purpose. At the present time approximately 12,000,000 barrels of oil are being produced from oil wells on the public domain and the Bureau needs all of its funds for handling oil produced on Government lands outside the Naval Reserves.

The Bureau of Mines has established a field office in Bakersfield, California, and can, without addition to its present force, supervise the drilling of wells on the Naval Petroleum Reserves. The force, however, is not adequate to gauge the oil

on Naval Reserve No. 2 and to compute its value. Naval Petroleum Reserve No. 2 is now producing about 8,800 barrels per day, all of which oil must be gauged in order to determine the royalty oil due the United States.

Attention is called to the fact that leases have been granted to the United Midway Oil Company and the Pan American Petroleum Company for the drilling of 22 additional wells in Naval Petroleum Reserve No. 1 and it is probable that these wells will produce several thousand barrels of oil in the near future.

In view of the fact that the royalty rate on these wells is $55\frac{1}{2}\%$ it is very important that the Government have a close check on this large quantity of oil.

It is probable that the Navy Department will soon desire to take the royalty oil from Naval Reserves in kind, for which it can trade with the oil companies and receive thereby an equivalent amount of fuel oil on the Pacific Coast. In order that the interests of the Navy and the Government may be properly protected in this matter, the Bureau of Mines needs additional employees and equipment. The Bureau has no funds available for this purpose, and I am therefore requesting you to allot the sum of \$5,500 for the remainder of this fiscal year to provide for this additional sum in the regular Bureau appropriation for the fiscal year starting July 1, 1922.

Respectfully,

E. C. FINNEY,
Acting Secretary."

(Testimony of E. C. Finney.)

DEFENDANTS' EXHIBIT "O."

"15 August, 1921.

My dear Mr. Secretary: I am in receipt of your letter of 30 July, 1921, in which you requested the Navy Department to allot to the Department of the Interior the sum of \$5,500 for the remainder of this fiscal year to provide for the protection of the interest of the Navy Department and of the Government in the Naval Reserves. In view of the fact that the Bureau of Mines has no funds available for this purpose at the present time, I am taking the necessary steps to have transferred to your Department the sum requested.

Sincerely yours,

(Signed) THEODORE ROOSEVELT,
Acting Secretary of the Navy." [264—186]

The witness states that at the time of the transactions which are the subject of his testimony F. B. Tough was the officer in charge of field operations of the United States Bureau of Mines in connection with oil and gas production and E. P. Campbell was the local officer in charge of the California fields with offices at Bakersfield, California.

As regards instances, other than those relating to the naval reserve lands, where the Interior Department carried on functions for other departments, Mr. Finney stated that according to his knowledge the Interior Department carried on certain work during the war and since the war for